



**MASSACHUSETTS  
BAY  
TRANSPORTATION  
AUTHORITY**

REQUEST FOR PROPOSALS (RFP)  
NON-FEDERAL FUNDED

RFP#: 13C-21

COMMBUYS BID#: BD-21-1206-40000-40000-58175

MBTA OVERHEAD CONTACT SYSTEM (OCS)  
INSPECTION CARS GREEN & BLUE LINES

Date Issued: February 3, 2021



## Contents

<b>1. INTRODUCTION .....</b>	<b>5</b>
<b>2. SCOPE OF WORK.....</b>	<b>5</b>
2.1 Base Scope of Work.....	5
2.2 Major Project Milestones and Expected Contract Duration.....	5
<b>3. BIDDERS INSTRUCTIONS AND PROCUREMENT PROCESS .....</b>	<b>5</b>
3.1 Bid Conference and On-Site Visits .....	5
3.2 Procurement Method .....	6
3.3 RFP Calendar and Delivery Instructions .....	6
3.4 Examination of RFP .....	7
3.5 Rules of Contact .....	7
3.6 Clarifications of Specifications, Questions and Answers.....	8
3.7 RFP Addendum .....	8
3.8 MBTA Standard Contract and Terms & Conditions.....	9
3.9 Confidentiality/Public Information Act Disclosure Requests .....	9
3.10 Business Conduct .....	10
3.11 Collusion .....	10
3.12 Acceptance Period.....	10
3.13 Pre-Contractual Expenses .....	10
3.14 Tax Exemption .....	11
3.15 Insurance .....	11
<b>4. SUBMISSION OF RESPONSE.....</b>	<b>13</b>
4.1 Response Submissions.....	13
4.2 Bidder Technical Proposal Requirements .....	14
4.3 Price Proposal Requirements .....	18
4.4 Power of Attorney.....	19
4.5 Acceptance of Response .....	19
4.6 Validity of Response .....	19
4.7 Incomplete Response .....	19
<b>5. MBTA POLICIES.....</b>	<b>19</b>
5.1 Small, Minority, Women, and Other Disadvantaged Businesses.....	19
<b>6. SELECTION PROCESS AND EVALUATION.....</b>	<b>19</b>



6.1	Best Value - Procurement .....	19
6.2	Confidentiality .....	20
6.3	Technical Proposal Responsiveness Review.....	20
6.4	Technical Proposal Evaluation .....	20
6.5	Price Proposal Responsiveness Review .....	21
6.6	Price Proposal Evaluation .....	21
6.7	MBTA Reserved.....	22
6.8	Appeal/Protest Procedures .....	23
<b>7.</b>	<b>CONTRACT STRUCTURE.....</b>	<b>23</b>
<b>8.</b>	<b>MBTA STANDARD TERMS AND CONDITIONS .....</b>	<b>23</b>
<b>9.</b>	<b>GUARANTEE OF END PRODUCTS (WARRANTY).....</b>	<b>24</b>
9.1	Warranty Periods .....	24
9.2	Warranty Procedures .....	24
9.3	General Requirements.....	24
9.4	Identification and Correction of Defects.....	25
9.5	Fleet Defects .....	25
9.6	Warranty Extension.....	25
<b>10.</b>	<b>CHANGE ORDERS .....</b>	<b>25</b>
10.1	Proposed Changes in Work Scope .....	25
10.2	Costs for Work Scope Changes.....	26
10.3	Change Order Authorization .....	26
10.4	Executed Change Orders.....	26
10.5	Change Status Report .....	27
<b>11.</b>	<b>CONTROL OF PROCUREMENT.....</b>	<b>27</b>
11.1	Engineering Support .....	27
11.2	Quality Assurance Program .....	27
11.3	Contractor Furnished Facilities.....	28
11.4	Concept Plans and Drawings.....	28
11.5	Contractor's Drawings .....	28
11.6	As-Built Drawings, Manuals, and Specifications for Final Records .....	29
11.7	Conformity with Technical Specifications .....	30
11.8	Assigning or Subcontracting.....	30
11.9	Project Meetings .....	31



11.10	Communication and Correspondence Control .....	31
11.11	e-Builder Project Management System Requirements .....	31
11.12	Access to Work and Records .....	32
11.13	Intellectual Property Rights .....	33
<b>12.</b>	<b>CONTROL OF MATERIALS .....</b>	<b>41</b>
12.1	Quality of Supply.....	41
12.2	Trade Names and Alternative Materials.....	41
12.3	Patented Devices, Materials, and Processes .....	42
12.4	First Article Inspections and Tests .....	43
12.5	Storage of Materials and Preparation for Shipment.....	43
12.6	Receipt and Delivery of Materials and Vehicles .....	44
12.7	Acceptance of Vehicles .....	45
12.8	Repairs After Non-Acceptance .....	45
12.9	Training Material and Test Equipment .....	46
12.10	Spare Parts.....	46
<b>13.</b>	<b>COMPENSATION.....</b>	<b>47</b>
13.1	Purchase Orders.....	47
13.2	Payment Terms .....	48
13.3	Payment Milestones.....	49
	<b>Form A: Pre-Award Bidder Evaluation Data Form.....</b>	<b>52</b>
	<b>Form B-1: Price Proposal.....</b>	<b>54</b>
	<b>Form B-1-a: Recommended Capital Spare Parts Price Proposal.....</b>	<b>54</b>
<b>14.</b>	<b>Massachusetts Bay Transportation Authority Standard Contract.....</b>	<b>55</b>
14.1	STANDARD TERMS AND CONDITIONS .....	56

**RFP 13C-21 Attachments published with this solicitation on COMMBUYS:  
Technical Specification and Appendices**



Attn: Bidder/s  
Request for Proposals (RFP) # 13C-21  
RFP Description: MBTA Dedicated Rail OCS Inspection Car Consists

Dear Madam/Sir,

The Massachusetts Bay Transportation Authority (“MBTA” or “Authority”), a corporate and a political subdivision of the Commonwealth of Massachusetts, existing pursuant to Mass. Gen. Laws, ch 161A (as amended) invites Bidders to participate in the competitive bid 13C-21. The Scope of Work is outlined below in Section 2. The MBTA may at its own discretion award contract(s) to one or multiple Bidders. All formal communication with the MBTA during the bidding period shall be only through the designated point of contact.

The MBTA’s designated point of contact for this solicitation will be:

Rob Weiner  
Massachusetts Bay Transportation Authority  
10 Park Plaza, Room 2810  
Boston, MA 02116  
Email: rweiner@MBTA.com

The RFP shall be launched through COMMBUYS and proposals must be submitted electronically no later than **6/24/2021 2:00 PM**, in full compliance with this RFP including but not limited to Section 3, Bidders Instructions and Procurement Process. This RFP shall remain in force until the execution of the Contract, or until modified or cancelled by the MBTA.

Respectfully,

Rob Weiner  
Massachusetts Bay Transportation Authority  
RFP # **13C-21**  
COMMBUYS Bid # BD-21-1206-40000-40000-58175



## 1. INTRODUCTION

The Massachusetts Bay Transportation Authority (MBTA) seeks proposals for the procurement of dedicated rail self-propelled **Overhead Contact System (OCS) Inspection Car Consists** for use on the MBTA's Light Rail and Rapid Transit Lines (Green and Blue Lines), all in conformance with the requirements of Technical Specification EE&QA-886, to be used primarily for inspection and light maintenance of the OCS.

Bidders are advised that this is a Competitive, Best Value Procurement.

## 2. SCOPE OF WORK

### 2.1 Base Scope of Work

The intent of the Contract is to procure:

- 2.1.1 One (1) OCS Inspection Car Consist for operation on the MBTA Green Line.
- 2.1.2 One (1) OCS Inspection Car Consist for operation on the MBTA Blue Line.
- 2.1.3 Capital Spare Parts, Special Tools, Training, Manuals and all other associated materials, equipment, and services as described in Technical Specification EE&QA-886 and this RFP.

### 2.2 Major Project Milestones and Expected Contract Duration

The expected initial duration of the resulting base contract is 41 months to final acceptance of the OCS Inspection Car Consists, not including warranty period. Major milestones that must be met, presented from Notice-to-Proceed (NTP), include:

- 2.2.1 Preliminary Design: 4 months after NTP
- 2.2.2 Intermediate Design: 6 months after NTP
- 2.2.3 Final Design: 13 months after NTP
- 2.2.4 First Article Inspection (FAI): 26 months after NTP
- 2.2.5 Delivery of first OCS Inspection Car Consist: NTP + 29 months
- 2.2.6 Delivery of second OCS Inspection Car Consist: NTP + 35 months

## 3. BIDDERS INSTRUCTIONS AND PROCUREMENT PROCESS

### 3.1 Bid Conference and On-Site Visits

The MBTA will hold a Pre-Bid Video Conference, Wednesday, February 10, 2021 at 10:00 AM (EST). Bidders are to select, or copy & paste the following link: <https://global.gotomeeting.com/join/411327181> from their computer, tablet, or smartphone to attend. Bidders are strongly encouraged to confirm attendance by emailing [rweiner@mbta.com](mailto:rweiner@mbta.com). The MBTA reserves the right to hold additional Bidders' conferences or On-Site Visits with all Bidders at any time prior to the Response Date. The MBTA will provide written notice of any changes to scheduled Bidders' conference via COMMBUYS [www.commbuys.com](http://www.commbuys.com). Furthermore, the MBTA reserves the right to conduct the Bid Conferences and On-Site Visits on the same date.

Due to the current state of affairs at the time of this procurement advertisement, it is unlikely that Pre-Bid On-Site visits to examine existing MBTA OCS Inspection Cars will be conducted. The MBTA may schedule an On-Site visit at a later date and will advise all Bidders of the date, time, and circumstances surrounding the visit.



Each Bidder, by submittal of its Response, acknowledges the opportunity to attend any Bidders' conference and On-Site Visits, if held, was offered to all Bidders, and waives any right to challenge this procurement based on its attendance at, or failure to attend, a Bidders' conference or On-Site Visit.

Each Bidder is encouraged to attend Bidders' conferences and On-Site Visits, if held, with appropriate members of its proposed staff, and if requested by the MBTA, senior representatives of proposed team members identified by the MBTA. Nothing stated at any Bidders' conference, On-Site Visit, or included in a written record or summary of a Bidders conference or On-Site Visit will modify this RFP or any other part of the RFP unless it is incorporated in an addendum issued.

### **3.2 Procurement Method**

This RFP is issued pursuant to the following laws and regulations: 801 CMR 21.00.

Bidder shall be responsible for making itself fully aware of, complying with, and in its Response addressing the impact of and compliance with all applicable laws and regulations.

This RFP will be launched and managed via COMMBUYS. Instructions for log-in and use of COMMBUYS are described in <http://www.mass.gov/anf/docs/osd/forms/instructions-for-vendors-responding-to-bids.docx>. Or, simply visit [www.commbuys.com](http://www.commbuys.com)

Bidders may also contact the COMMBUYS Helpdesk at [COMMBUYS@state.ma.us](mailto:COMMBUYS@state.ma.us) or the COMMBUYS Helpline at 1-888-MA-STATE. The Helpline is staffed from 8:00 a.m. to 5:00 p.m. Monday through Friday (Eastern Time), except on federal, state, and Suffolk county holidays.

It is the responsibility of Bidders to maintain an active registration in COMMBUYS and to keep current the email address of the Bidder's Designated Representative and to monitor that email inbox for communications from the MBTA, including responses to Bidder questions. The MBTA and the Commonwealth assume no responsibility if a Bidder's designated email address is not current, or if technical problems, including those with Bidder's computer, network, or internet service provider (ISP) cause email communications sent to or from Bidder and the MBTA to be lost or rejected by any means including email or spam filtering.

Bidder shall review and study all documents thoroughly and report any discrepancies, omissions, technical queries, or other clarifications via COMMBUYS.

Questions and clarification requests submitted by Bidder will, together with MBTA's response, be made available to all Bidders via COMMBUYS.

#### **3.2.1 MBTA Designated Representative**

Unless specifically stated otherwise in this RFP, Bidder must submit changes to Bidder's designated representative and any other communications in to the MBTA's Point of Contact via COMMBUYS. The MBTA's Point of Contact is Rob Weiner, [rweiner@MBTA.com](mailto:rweiner@MBTA.com).

#### **3.2.2 Identification of Bidder Identified Representative**

When submitting a Bid, the Bidder must identify to the MBTA's Point of Contact its own Designated Representative to act on behalf of the Bidder relating to this procurement.

### **3.3 RFP Calendar and Delivery Instructions**

Bidder is required to prepare and submit all required documents to MBTA electronically via COMMBUYS with COMMBUYS # BD-21-1206-40000-40000-58175 and RFP# 13C-21 indicated in the Subject Line of each communication.

The MBTA anticipates carrying out the procurement process in accordance with the schedule noted in the table below. All times are local Boston, Massachusetts, USA, times unless otherwise indicated. The



schedule is subject to modification at the sole discretion of the MBTA. Bidders will be notified of any change by an addendum to this RFP.

<b>TABLE: RFP CALENDAR</b>		
<b>Procurement Activity</b>	<b>Date</b>	<b>Time</b>
RFP issued	2/3/2021	3:00 p.m.
Pre-bid conference (Estimated)	2/10/2021	10:00 a.m.
Deadline for submission of Bidder questions via COMMBUYS (first round)	3/4/2021	12:00 p.m.
Official Answers for Bid Q&A published by MBTA on COMMBUYS (first round)	3/25/2021	12:00 p.m.
Deadline for submission of Bidder questions via COMMBUYS - (second round if required)	4/8/2021	12:00 p.m.
Official Answers for Bid Q&A published by MBTA on COMMBUYS (second round)	4/22/2021	12:00 p.m.
Proposal Due Date	6/24/2021	2:00 p.m.
In-person presentations at MBTA (estimated)	7/22/2021	
MBTA visit to Vendors (estimated)	8/19/2021	
Final Contract Negotiations and Fiscal Management Control Board award (estimated)	9/9/2021	
<b>Contract Execution (estimated)</b>	10/1/2021	

### **3.4 Examination of RFP**

Each Bidder shall be solely responsible for examining, with appropriate care and diligence, the RFP, including Enclosures and any addenda and material made available to Bidders by the MBTA, and for informing itself with respect to any and all conditions that may in any way affect the amount or nature of its Response, or the performance of the Contractor's obligations under the Contract with the MBTA. Failure of the Bidder to so examine and inform itself shall be at its sole risk, and the MBTA will provide no relief for any error or omission.

The submission of a Response shall be considered prima facie evidence that the Bidder has made the above-described examination and is satisfied as to the conditions to be encountered in performing the Work and as to the requirements of the Contract.

### **3.5 Rules of Contact**

Starting on the date the RFP is issued and ending on the earliest of (a) the award and execution of the Contract, (b) rejection of all Responses by the MBTA, or (c) cancellation of the procurement, the following rules of contact shall apply. These rules are designed to promote a fair and unbiased procurement process. Contact includes face-to-face, telephone, email, or formal written communication.

The specific rules of contact are as follows:

1. No Bidder, or any of its team members, may communicate with another Bidder or its team members with regard to this RFP or either team's Response, except that subcontractors that are shared between two or more Bidder teams may communicate with their respective team members so long as those Bidders establish a protocol to ensure that the subcontractor will not act as a conduit of information between the teams. This prohibition does not apply to public discussions regarding the RFP at any MBTA sponsored Bidders' conferences.





2. No Bidder or representative thereof shall have any ex parte communications regarding the RFP, the Contract, or the procurement described herein with any member of the MBTA's Fiscal and Management Control Board ("FMCB"), the Massachusetts Department of Transportation ("MassDOT") Board of Directors, or with any MassDOT or MBTA staff, advisors, contractors, or consultants involved with the procurement, except for communications expressly permitted by the RFP or except as approved in advance at the MBTA's Point of Contact's sole discretion. The foregoing restriction shall not, however, preclude or restrict communications with regard to matters unrelated to the RFP, Contract, or procurement or from participation in public meetings of the MBTA FMCB or MassDOT Board of Directors or any public or Bidder workshop related to this RFP.
3. The Bidders shall not contact employees, representatives, and members of Hatch-LTK regarding this RFP, the Contract, or the procurement.
4. Any communications determined by the MBTA, in its sole discretion, to be improper may result in disqualification.
5. Any official information regarding this RFP will be disseminated from the MBTA's Point of Contact via COMMBUYS.
6. The MBTA will not be responsible for any oral exchange or any other information or exchange that occurs outside the official process specified herein.

### **3.6 Clarifications of Specifications, Questions and Answers**

Bidders shall review the RFP and any addenda issued by the MBTA prior to the Response Date, and request written clarification or interpretation of any perceived discrepancy, deficiency, ambiguity, error, or omission contained therein, or of any provision which the Bidder fails to understand or to which the Bidder is suggesting a change. Failure of the Bidder to so examine and inform itself shall be at its sole risk, and no relief for error or omission will be provided by the MBTA. Bidders shall submit, and the MBTA will respond to, questions and requests for written clarification in accordance with this Section 3.6.

Questions and clarification requests shall be minimized or aggregated to the extent possible. All questions and clarification requests shall be made by Bidder through the "Bid Q&A" tab in COMMBUYS. Such comments and questions may be submitted at any time prior to the applicable date specified in Section 3.3 or such later date as may be specified in any addendum and shall: (i) identify the document; (ii) identify the relevant section number and page number) or, if it is a general question, indicate so; and (iii) not identify the Bidder in the body of the question or contain proprietary or confidential information. Questions submitted in any other format or method than that described above will not be considered.

Responses to requests for clarification or questions will be provided in writing and issued by the MBTA's Point of Contact via the COMMBUYS. In addition, the MBTA reserves the right to, in its sole discretion, not answer all questions submitted by Bidders.

It is the Bidder's responsibility to verify the MBTA's receipt of questions and clarification requests.

### **3.7 RFP Addendum**

The MBTA reserves the right to issue addenda to the RFP after initial publication.

The MBTA will not be bound by, and Bidders should not rely on, any oral communications regarding the RFP. Use of any information gathered or received from other agencies or entities shall be at the Bidder's own risk. Only information verified in writing by the MBTA will be considered reliable.

It is each Bidder's responsibility to check the COMMBUYS for any addenda and any Bid Q&A records related to this RFP. The MBTA and the Commonwealth accept no responsibility and will provide no accommodation to Bidders who submit their Response based on an out-of-date RFP or on information received from a source other than the COMMBUYS.



The Bidder shall acknowledge in its Technical Proposal Cover Letter (see Enclosure 1) receipt of all addenda and question and answer responses. Failure to acknowledge such receipt may cause the Response to be deemed non-responsive and be rejected.

### **3.8 MBTA Standard Contract and Terms & Conditions**

The MBTA does not encourage attempts to negotiate Section 14.1 MBTA Standard Contract Terms & Conditions. Many of these provisions are required by law; others are longstanding MBTA policy/practice. Accordingly, Bidders/proposers should only redline or object to provisions that they find absolutely unacceptable. Any rejection or modification of these provisions may disqualify a Bid/proposal as being non-responsive or non-compliant

### **3.9 Confidentiality/Public Information Act Disclosure Requests**

#### **3.9.1 Disclosure Waiver**

Each Bidder, by submitting a Response to the MBTA in response to the RFP, consents to the disclosures described in this RFP, including this Section and all other disclosures required by law, and expressly waives any right to contest, impede, prevent, or delay such disclosure, or to initiate any proceeding that may have the effect of impeding, preventing, or delaying such disclosure, under Mass. Gen. Laws, ch. 66 (the Massachusetts Public Records Law or “Public Records Law”) or any other law relating to the confidentiality or disclosure of information. Under no circumstances will the MBTA be responsible or liable to a Bidder or any other party as a result of disclosing any such materials. Each Bidder hereby further agrees to assist the MBTA in complying with these disclosure requirements.

#### **3.9.2 Public Disclosure of Response Documents**

After execution of the Contract, or in the event that the procurement is cancelled by the MBTA, the MBTA shall have the right to publicly disclose any and all portions of all the Responses. The MBTA will not disclose material deemed confidential by the MBTA in accordance with Section 3.9.3, unless otherwise required by law.

#### **3.9.3 Disclosure Process for Requests Under the Public Records Law**

Proposals will not be publicly opened or evaluated.

All written correspondence, exhibits, reports, printed material, photographs, tapes, electronic disks, and other graphic and visual aids submitted to the MBTA during this procurement process, including as part of the response to this RFP, become the property of the MBTA upon their receipt by the MBTA and will not be returned to the submitting parties. Except as provided in the Public Records Law, all materials submitted to the MBTA are subject to release as public records. Bidders shall familiarize themselves with the provisions of the Public Records Law. In no event shall the MBTA, or any of their agents, representatives, consultants, directors, officers, or employees, be liable to a Bidder or Bidder team member for the disclosure of all or a portion of a Response or related information submitted during this procurement.

If a Bidder has special concerns about information which it desires to make available to the MBTA but which it believes constitutes a trade secret, proprietary information, or other information excepted from disclosure, such responding Bidder shall specifically and conspicuously designate that information by placing “TRADE SECRET - PROPRIETARY” in the header or footer of each such page affected and by identifying such trade secret, proprietary information in the Technical Proposal Cover Letter (see Enclosure 1). Nothing contained in this provision shall modify or amend requirements and obligations imposed on the MBTA by the Public Records Law or other applicable law. The provisions of the Public Records Law or other laws shall control in the event of a conflict between the procedures described above and the applicable law.

If the MBTA receives a request for public disclosure of all or any portion of a Response or its related information that is designated as “trade secret - proprietary,” the MBTA will endeavor to use reasonable



efforts to notify the applicable Bidder of the request. The Bidder can assert, in writing and at its sole expense, a claimed exception under the Public Records Law or other applicable law, within the time period specified in the notice issued by the MBTA and allowed under the Public Records Law. The Bidder can choose to defend any action seeking release of the records it believes to be confidential information. The Bidder shall indemnify, defend, and hold harmless the MBTA and its agents and employees from any judgments awarded against the MBTA and its agents and employees in favor of the party requesting the records, including any and all costs connected with that defense. This indemnification survives the MBTA's cancellation or termination of this procurement or award and subsequent execution of a Contract. In submitting a Response, the Bidder agrees that this indemnification survives as long as the trade secret, proprietary information is in the possession of the MBTA.

The MBTA shall not under any circumstance be responsible for securing a protective order or other relief enjoining the release of information marked "trade secret – proprietary" in any Response, nor shall the MBTA be in any way financially responsible for any costs associated with securing any such order or for any loss associated with the release of information marked "trade secret – proprietary" or otherwise.

### **3.10 Business Conduct**

All Responses submitted by a Bidder to the MBTA shall be made without collusion with any other Bidder(s) submitting a Response to this RFP.

Bidder shall not directly or indirectly, in relation to this RFP, give, promise, attempt to give, or approve or authorize the giving of anything of value, including by transferring all or part of the remuneration payable under any Contract, to:

1. Any person employed or representing the MBTA;
2. Any other person, including any public official;
3. A political party or a labor union controlled by any governmental authority or political party; or
4. A charitable or other organization, or an officer, director, or employee thereof, or any person acting directly or indirectly on behalf of the same

for the purpose of (i) securing any improper advantage for either Bidder or the MBTA; (ii) inducing or influencing a public official improperly to take any action or refrain from taking any action in order for either Bidder or the MBTA to obtain or retain business, or to secure the direction of business to either Bidder or the MBTA, or (iii) inducing or influencing a public official to use his or her influence with any governmental authority or public international organization for any such purpose.

### **3.11 Collusion**

The Bidder understands that any Bid submitted to the MBTA is made without collusion with any other Bidder submitting a Bid on the same commodity/service, and is in all respects fair and without fraud.

### **3.12 Acceptance Period**

The Authority requires a minimum Acceptance Period of at least 180 calendar days. In case the MBTA requires an extension, the MBTA will notify all Bidders accordingly. "Acceptance Period" for purposes of this solicitation means the number of calendar days available to the MBTA for awarding a contract based on the Due Date specified in this solicitation for receipt of Bids.

### **3.13 Pre-Contractual Expenses**

The MBTA shall not be liable for any pre-contractual expenses incurred by the Bidder in the preparation of its proposal. The Bidder shall not include any such expenses as part of its proposal. Pre-contractual expenses are defined as expenses incurred by the Bidder including but not limited to preparing its Bid in response to this solicitation, submitting its Bid to the MBTA, negotiating with the MBTA any matter related



to this Bid, inspection, testing, shipping, and return shipping of proposed goods samples, or any other expenses incurred by the Bidder prior to date of award, if any, of the Agreement.

### 3.14 Tax Exemption

The MBTA is exempt from Federal Excise Tax, including Transportation Tax, and will furnish properly executed tax exemption certificates upon request. The MBTA is also exempt from Massachusetts State Sales Tax — Exemption Number E-042-323-989. Such taxes should not be included in Bid prices.

The Bidder alone shall be responsible for payment of all federal, state and local taxes of all types and kinds applicable to such fees incurred under this Agreement.

### 3.15 Insurance

- 3.15.1 The Contractor shall carry and maintain, throughout the term of this Contract, including any extensions thereof, all insurance required under this section.
- 3.15.2 The successful bidder shall submit proof of insurance for the requirements detailed at the time of submitting their bid. If in the case they are not available at the time of preparing their Bid, the successful bidder certifies that they will carry such insurance policies and all costs resulting from this are included in their pricing.
- 3.15.3 The successful bidder shall provide proof of insurance within three business days of conditional notice of award.
- 3.15.4 The Contractor shall carry and maintain **Commercial General Liability Insurance** covering all operations by or on behalf of the Contractor on an occurrence basis against claims for bodily injury, property damage (including loss of use), personal injury and advertising injury with limits not less than \$1,000,000 per occurrence and \$1,000,000 annual aggregate. Terms and conditions for required insurance shall include:
  - 1. Policy Endorsement deleting any exclusion for work within 50 feet of rail.
  - 2. Required insurance coverage specified above shall be placed with insurance companies licensed and/or authorized by the Massachusetts Division of Insurance to do business in the Commonwealth of Massachusetts and having a Best's rating of A- or better.
  - 3. Proof of required insurance shall be provided before the Contract is commenced and be kept in full force and effect throughout the term of the Contract. Required insurance shall be primary to and non-contributory to any insurance or self-insurance maintained by the MBTA, and shall require that the MBTA be given at least 30 days' advance written notice in the event of any cancellation.
  - 4. Commercial General Liability shall be written on an occurrence basis form, as opposed to a claim made basis form.
  - 5. All such insurance as is required of the Contractor shall be provided by or on behalf of subcontractors to cover their operations performed.
  - 6. At the inception date of this contract and throughout the term of the Contract, the MBTA shall be provided with certificates of insurance with MBTA named as additional insured and evidencing that such insurance policies, including required limits and sub limits are in place and provide coverage as required.
- 3.15.5 The Contractor shall carry and maintain **Automobile Liability Insurance** covering the use of all vehicles: owned, leased, hired and non-owned, with limits not less than \$1,000,000 combined single limit.



1. Required insurance coverage specified above shall be placed with insurance companies licensed and/or authorized by the Massachusetts Division of Insurance to do business in the Commonwealth of Massachusetts and having a Best's rating of A- or better.
2. Required insurance shall be taken out before the Contract is commenced and be kept in full force and effect throughout the term of the Contract, shall be primary to and non-contributory to any insurance or self-insurance maintained by the MBTA, and shall require that the MBTA be given at least 30 days' advance written notice in the event of any cancellation.
3. Automobile Liability shall be written on an occurrence basis form, as opposed to a claim made basis form.
4. All such insurance as is required of the Contractor shall be provided by or on behalf of subcontractors to cover their operations performed.
5. At the inception date of this contract and throughout the term of the Contract, the MBTA shall be provided with certificates of insurance with MBTA named as additional insured and evidencing that such insurance policies, including required limits and sub limits are in place and provide coverage as required.

**3.15.6** The Contractor shall carry and maintain **Workers' Compensation Insurance**, including Employers Liability Insurance as provided by Massachusetts General Laws, Chapter 152, as amended, covering all work and services performed under the Contract.

1. Employer's Liability requires the following minimum limits:
  - a. \$1,000,000 Each Accident for Bodily Injury by Accident
  - b. \$1,000,000 Each Employee for Bodily Injury by Disease
  - c. \$1,000,000 Aggregate Policy Limit for Bodily Injury by Disease.
2. The required insurances coverage specified above shall be placed with insurance companies licensed and/or authorized by the Massachusetts Division of Insurance to do business in the Commonwealth of Massachusetts and having a Best's rating of A- or better.
3. Required insurance shall be taken out before the Contract is commenced and be kept in full force and effect throughout the term of the Contract, shall be primary to and non-contributory to any insurance or self-insurance maintained by the MBTA, and shall require that the MBTA be given at least 30 days' advance written notice in the event of any cancellation.
4. At the inception date of this contract and throughout the term of the Contract, the MBTA shall be provided with certificates of insurance evidencing that such insurance policies, including required limits and sub limits are in place and provide coverage as required. Such insurance shall contain a waiver of any and all subrogation rights against the MBTA.

**3.15.7** The Contractor shall carry and maintain **Umbrella Liability Insurance** with limits not less than \$10,000,000 per occurrence and annual aggregate, covering all work and services performed under the Contract.

1. Such insurance follows the form of underlying insurance terms and conditions.
2. Required insurance coverage specified above shall be placed with insurance companies licensed and/or authorized by the Massachusetts Division of Insurance to do business in the Commonwealth of Massachusetts and having a Best's rating of A- or better.



3. Required insurance shall be taken out before the Contract is commenced and be kept in full force and effect throughout the term of the Contract, shall be primary to and non-contributory to any insurance or self-insurance maintained by the MBTA, and shall require that the MBTA be given at least 30 days' advance written notice in the event of any cancellation.
4. Umbrella/Excess Liability shall be written on an occurrence basis form, as opposed to a claim made basis form.
5. All such insurance as is required of the Contractor shall be provided by or on behalf of subcontractors to cover their operations performed.
6. At the inception date of this contract and throughout the term of the Contract, the MBTA shall be provided with certificates of insurance with MBTA named as additional insured and evidencing that such insurance policies, including required limits and sub limits are in place and provide coverage as required.
7. Required insurance limits shall be equal to United States Dollars ("USD").

#### **4. SUBMISSION OF RESPONSE**

##### **4.1 Response Submissions**

Responses shall be submitted via COMMBUYS.

**Bidder Technical & Price Proposals shall be submitted as separate files and identified as such.**

##### **Technical Proposal:**

- Enclosure 1 – Bid Cover Letter
- Form A – Pre-Award Bidder Evaluation Form
- Bidder Technical Proposal to Schedules T1-T4
- Certificate of Insurance
- Performance Guarantee certification (see Sec. 14.1.18.2)
- Performance Bond or Irrevocable Stand-By Letter of Credit certification (see Sec. 14.1.18.2)
- Financials
- Power of Attorney
- Bidder initialed Addenda (if any)
- Bidder signed MBTA Terms & Conditions (Sec 14.1 to end).

##### **Price Proposal:**

- Form B-1: Price Proposal
- Form B-1-a: Capital Spare Parts Itemized Price Proposal

If a Bidder is a team, whether or not legally formed, the Technical Proposal Cover Letter and Price Proposal Cover Letter shall each be signed by all parties to the Bidder so that the Response is legally binding upon each member of the Bidder.

Any interlineations, erasures or overwriting in the Response will only be valid if they are initialed by the Authorized Signatories.

Bidders shall submit Responses including all forms and schedules and shall not remove pages from the



provided forms. The Technical Proposal and Price Proposal shall be completely separate documents. Bidder Financials shall be included in Technical Proposal only.

**Any Response which materially fails to meet the Response requirements of the RFP and document submittal requirements above will be found non-responsive without further evaluation unless the evaluation team, at its discretion, determines that the non-compliance is insubstantial and can be corrected. In these cases, the evaluation team may allow the Bidder to make minor corrections to the Response.**

## **4.2 Bidder Technical Proposal Requirements**

The requirements set forth here describe the minimum technical information to be submitted by the Bidder to the MBTA as part of their Proposal. The Proposal shall enable the MBTA to assess and evaluate the technical component of the Proposal.

### **1. Technical Proposal Schedules**

- a. Schedule T-1 – Bidder Experience, Performance, and Staffing
- b. Schedule T-2 – Technical Project Approach and Understanding, including
  - i. **One (1) Conceptual Design Configuration, inclusive of any deviations or alternate proposals**
    1. This shall be the Bidders initial basis for their submitted Price Proposal.
- c. Schedule T-3 – Schedule and Contractor Capabilities
- d. Schedule T-4 – Quality Management Plan and Material Control

The Technical Proposal must be no more than seventy (75) single-sided pages of text, visuals, and attachments. Unnecessarily elaborate proposals or lengthy presentations are not desired or required. The only exception to this maximum page limit is the inclusion of resumes and conceptual drawings as requested and required. A maximum two (2) page introductory letter shall be submitted inclusive of the seventy-five (75) page limitation.

### **4.2.1 Schedule T-1: Bidder Experience, Performance, and Staffing**

Bidders shall submit the following information for itself and its proposed subcontractors:

#### **1. Introduction to the Firm**

Bidders shall briefly summarize their firm's business and core competencies, as well as additional information on firm tenets/culture, guiding principles, and approach to each client engagement.

#### **2. Description of Prior Experience**

Bidders shall submit an experience statement from previous recent contracts with a scope of work similar to that of this RFP. This information shall be provided in the specified format and cover at least the following information:

- a. List (in a matrix format) all OCS Inspection Car Design and Manufacturing contracts for the past ten (10) years, including:
  - i. Customer, type of equipment, quantity supplied, major vendors and subcontractors utilized, brief description of the OCS Inspection Car (dimensions, capacities, features, etc.), contractual delivery schedule, and actual delivery schedule;



- ii. List a contact person for each customer, including name, title, address, telephone number, and email address. MBTA may contact any reference as part of the proposal evaluation;
  - iii. Describe whether the vehicles delivered were of an existing design or an entirely new design;
  - iv. Indicate the extent of the contractor's design and manufacturing responsibility (i.e., total vehicle including car body and all systems, car body only, systems only, etc.);
  - v. The Bidder may combine, with their proposal, the information requested within Schedule T-1 and Form A: Pre-Award Bidder Evaluation Form to satisfy both sections.
- b. Discussion of the qualifications of all other firms proposed to be utilized in the performance of the work (including joint venture members or major subcontractors/subconsultants), previous projects performed with subcontractors/ subconsultants, and clearly differentiate which qualifications listed relate to which firm.

### 3. Major Subcontractors

Bidders shall identify all major subcontractors and suppliers to be utilized along with their anticipated work-scope. This information shall cover at least the following information:

- a. List experience relevant to the performance of work within the transit and/or transportation industries. Experience relevant to the performance of work for federal, state or local agencies (other than those in the transit or transportation industries).

### 4. Staffing Plan

Bidders shall submit a staffing plan that identifies the project manager(s) and any other key personnel, who will be assigned to the project. Also discuss the qualifications and experience of each key individual. At a minimum, the Bidder shall include the following:

- a. Qualifications of project manager(s) and all key personnel who will be assigned to the project.
- b. Submit resumes of the core management and engineering team (Project Manager, Production Manager, Materials Manager, Engineering Manager, Engineering Leads, etc.) and key personnel (inclusive of all relevant joint venture and subcontractor personnel) who will be assigned to the project.
- c. Discuss the percentage (%) of time to be committed to the project by each of the project manager(s) and designated key personnel.
- d. Submit an organization chart, complete with a listing of all job classifications and the number of full- and part-time employees in each job classification, to be used in the work performance. Also identify which job classifications relate to any subcontractor personnel.

#### 4.2.2 Schedule T-2: Technical Project Approach and Understanding

Bidders shall submit the following information:

##### 1. Project Overview – Approach and Capabilities

Provide a description of how the Bidder proposes to organize and perform the work of the project. Include the following:

- a. Proposed methods of accomplishing the work required for this project.





- i. These methods shall be presented in a narrative form and focused on the methods that the Bidder deems critical to project success.
- ii. This narrative shall clearly demonstrate how the bidder will design, fabricate, assemble, inspect, and test the OCS Inspection Car Consists.
- iii. The narrative shall include discussion on how the Bidder will coordinate, organize and prepare all required contract deliverable requirements and design review documentation.

## 2. OCS Inspection Car Consist Conceptual Design

Provide one (1) OCS Inspection Car Consist conceptual design proposal, that is **inclusive of any deviations or alternate proposals**. The conceptual design proposal shall include:

- a. Prints for the conceptual design of the Bidders proposed OCS Inspection Car Consist. The prints shall include:
  - i. General Arrangement: Identifying all major components, number of vehicles, dimensions, consist and vehicle configuration, and special features.
  - ii. Multiple views, including dimensioned cross sections, and perspectives.
- b. A list (in a matrix format) of proposed deviations or alternate proposals which the Bidder has taken exception to and included in their conceptual design. All deviations or alternate proposals shall be presented in the following format. An example is provided in the format below.

### EXAMPLE Format and Deviation

Specification Section # / Appendix #	Describe Proposed Deviation or Alternate
Appendix A, Sec 1.8.1.7	Will utilize our service proven standard painting system and colors....

- i. The Bidder shall note any special circumstances, assumptions, reasoning for the deviation or alternate, or intent in developing this portion of their proposal to provide MBTA with a complete understanding of their Proposal.
- ii. The Bidder's Price Proposal shall be based on these proposed deviations or alternate proposals.

**NOTE:** If the MBTA takes exception to any of the proposed deviations or alternate proposals, it will notify the Bidder, who will be given the opportunity to revise its Technical and Price Proposals based on the MBTA's comments.

## 3. OCS Inspection Car Technical Approach

Provide a narrative describing the technical approach to be used in designing the OCS Inspection Car Consists. The narrative shall include preliminary technical information for the proposed OCS Inspection Car Consists, inclusive of any deviations or alternate proposals, along with the following:

If applicable, Bidders should highlight which systems they consider to be service proven and, provide a brief description on how the system or component will be modified (if needed) to meet the requirements of the Technical Specifications.

- a. Wire maintenance lifts functional description and configuration



- b. Outrigger and Suspension Lockout functional description and configuration (if applicable)
- c. Vehicle and Truck dimensions
- d. Operator and Crew Cabin layout
- e. Propulsion System functional description and configuration
- f. Braking System functional description and configuration
- g. Coupler functional description and configuration
- h. Lighting functional description and configuration
- i. Battery capacity calculations
- j. Suspension functional description and configuration
- k. Deadman functional description and configuration
- l. AVI functional description and configuration
- m. Electrical System design scheme
- n. Estimated light weight, gross vehicle weight, and axle weight of each vehicle
- o. Vehicle length, truck spacing, and axle spacing for each vehicle
- p. Wire Handling Devices functional description and configuration
- q. Wire reels functional description and configuration
- r. OCS Wire Inspection System functional description and configuration
- s. Track Geometry System functional description and configuration (If proposed)

#### **4. Vehicle Maintenance and Spare Parts Technical Approach**

Provide a narrative describing the Bidder's philosophy to vehicle maintenance and how it relates to the requirements set forth in the Technical Specifications. The narrative shall also include the following:

- a. List of recommended Capital Spare components/parts for the OCS Inspection Car Consists
- b. Sample preventative maintenance tasks and schedule

##### **4.2.3 Schedule T-3: Schedule and Contractors Facilities**

Bidders shall submit the following information for itself and its proposed subcontractors:

#### **1. Milestone Schedule**

Bidders shall provide a project delivery and major milestone schedule that is accompanied by a narrative that provides information regarding:

- a. Assumptions used in developing the schedule.
- b. Major tasks / scope of work
- c. Deliverables relevant for this project
- d. Major component materials and supplies/equipment (including all anticipated items with lead times greater than 3 months).
- e. Identification of major risks to achieving the schedule.
  - i. Include how COVID-19 may or may not impact the schedule.



- f. Identification of critical path activities.

## **2. Contractor Facility and Capabilities**

Bidders shall provide an overview of its proposed manufacturing facility, including the following:

- a. Location(s) which the OCS Inspection Car Consists will be manufactured and tested. Include location of major subassemblies.
- b. Identification of current and expected workload and capability to implement this order within the proposed schedule.
- c. Full description of the equipment, special machinery, and test facilities available at the Contractor's facilities.

### **4.2.4 Schedule T-4: Quality Management Plan and Material Control**

Bidders shall submit the following information for itself and its proposed subcontractors:

#### **1. Quality Management Plan**

The Bidder shall provide a thorough description of the Quality Management/Control Plan and how it will be implemented and maintained throughout the Project.

A complete description of the Bidder's Quality Assurance program. This description must include:

- a. The structure of the Bidder's QA Department.
- b. The number of QA professionals expressed as a percentage of the total manufacturing workforce.
- c. How Quality Assurance maintains independence from manufacturing.
- d. How quality of sub-supplied material is maintained and managed.
- e. Surveillance and inspection process and how Quality Control inspectors maintain independence from manufacturing.
- f. How Quality Control problems are identified, documented, and fed back into the manufacturing process to be resolved through corrective actions.
- g. How Configuration Control is managed.
- h. How the Contractor will interact and involve MBTA representatives throughout the manufacturing process.

#### **2. Material Procurement and Control**

Bidders shall provide a comprehensive description of its material supply and control procedures. Describe existing material procurement control procedures implemented and proposed approach on this program.

## **4.3 Price Proposal Requirements**

Bidders are required to quote firm fixed price(s)/rate(s) or lump sums, extended price(s), and the grand total of the Bid. The quoted prices shall be inclusive of ancillary charges including but not limited to prevailing wages, tooling, equipment, transportation costs, customs, duty charges, and other associated charges.

The unit price/rate shall prevail in case of an error in price extension. Prices submitted shall be valid throughout the Acceptance Period.



Bidders shall submit (RFP attachment) Price Proposal on Forms B-1 and B-1-a, as outlined in sec 4.1 and shall not be combined with the Technical Proposal and in accordance with this RFP.

**Bidder Price Forms are provided as an attachment to this RFP.**

#### **4.4 Power of Attorney**

Bidder shall enclose a power of attorney in its own form, duly signed by a legally authorized officer of the Bidder authorizing the Authorized Signatories to sign the Response and bind the Bidder to the Response.

#### **4.5 Acceptance of Response**

The Response constitutes a binding offer by the Bidder to perform the Scope of Work on the terms of the Response, and the MBTA shall have the right to accept or reject such offer and/or any conditions proposed in full or in part. If the Response is accepted, the Bidder shall conclude the Contract with the MBTA, based on the RFP, any addenda, the Response and any agreed amendments thereto. Until the formal Contract is signed, Bidder has no authority to proceed with the Scope of Work or to incur any costs for which MBTA may be held liable. MBTA shall have no obligations towards Bidder until a formal contract has been entered into.

#### **4.6 Validity of Response**

The Response is irrevocable, and shall remain valid and open for acceptance, for a period of 180 days after the Response due date. The MBTA reserves the right to extend the validity period and notify Bidders accordingly.

#### **4.7 Incomplete Response**

If Bidder does not fully comply with this RFP, or if the Response is incomplete or vague, the Response may not be considered, unless the MBTA in its absolute discretion decides otherwise.

### **5. MBTA POLICIES**

#### **5.1 Small, Minority, Women, and Other Disadvantaged Businesses**

It is the policy of the Commonwealth and the MBTA to ensure non-discrimination in the procurement of goods and services. It is the MBTA's intention to create a level playing field on which all contractors and subcontractors can compete fairly for contracts. The MBTA promotes equity of opportunity in state contracting; and to that end; encourages participation of certified small, minority, women, and other disadvantaged owned businesses as those terms are defined by the Commonwealth's Supplier Diversity office. The MBTA further recognizes the importance of meaningful partnerships involving subcontracting with certified small minority, women and other disadvantaged owned businesses.

### **6. SELECTION PROCESS AND EVALUATION**

Proposals will be evaluated and ranked based on the best overall technical & financial value to the MBTA as determined by the selection committee.

#### **6.1 Best Value - Procurement**

MBTA will, in its sole discretion, determine which Proposal or Proposals represents the "best value" based on an analysis of the results of the Technical Proposal Evaluation and the Price Proposal Evaluation.

Bidder is advised that the MBTA shall not be bound to accept the lowest priced Response or the Response with the highest technical Proposal Score. The selection will be made on a best-value basis, evaluating price along with other factors. For purposes of this procurement, all evaluation factors other than price, when combined, are more important than the lowest price. Therefore, the MBTA may decline to select the lowest-priced, technically acceptable Proposal, if the MBTA determines that another, higher-priced Proposal



demonstrates sufficient additional technical merit to justify the additional cost. Similarly, price will be an important factor in differentiating between Proposals of comparable technical merit.

## **6.2 Confidentiality**

All information received from each Offeror will be treated as confidential information and will not be distributed prior to Contract execution, other than for the purpose of evaluation of the Proposal. Offerors are advised that all Proposals received are subject to the Massachusetts Public Records Law, G.L.c.66.

## **6.3 Technical Proposal Responsiveness Review**

MBTA reserves the right, in its sole discretion, to determine if a Proposal is responsive and the Offeror is responsible. In determining whether an Offeror has the ability to perform successfully under the terms and conditions of the proposed procurement, MBTA will consider such matters as the Offeror's integrity, compliance with public policy (e.g., EEO record, debarment status, etc.), record of past performance, and financial and technical resources.

Upon receipt, Technical Proposals will be reviewed for responsiveness to the RFP requirements, including (i) deficiencies and minor informalities, irregularities, and apparent clerical mistakes which are unrelated to the substantive content of the Response; (ii) conformance to the RFP instructions regarding organization and format; and (iii) the responsiveness of the Offeror to the requirements set forth in this RFP. MBTA may request Offeror clarification of any minor informalities, irregularities, and apparent clerical mistakes, after which MBTA may evaluate the Response, at MBTA's sole discretion.

Those Technical Proposals not responsive to this RFP may, at MBTA's sole discretion, be excluded from further consideration and the Offeror will be so advised.

## **6.4 Technical Proposal Evaluation**

Each Technical Evaluation Criterion will be evaluated by considering all information included in the Technical Proposal related to the criterion. The Technical Evaluation Criteria, in order of importance, are:

- 1. Technical project approach and understanding**
- 2. Bidder experience, performance, and staffing**
- 3. Schedule and contractor capabilities**
- 4. Project Quality Management Plan and material control**

The Technical Evaluation Criteria will be rated using a numerical rating approach. This will be based on the following scoring scale:

- a) **Excellent (5 Points Awarded):** The Bidder has presented and supported an approach that is considered to significantly exceed stated criteria in a way that is beneficial to the MBTA. This rating indicates a consistently outstanding level of quality, with very little or no risk that this Bidder would fail to meet the requirements of the solicitation. There are no weaknesses.
- b) **Good (4 Points Awarded):** The Bidder has presented and supported an approach that is considered to meet the stated criteria. This rating indicates a generally better than acceptable quality, with little risk that this Bidder would fail to meet the requirements of the solicitation. Weaknesses, if any, are very minor and not material to the Response. Correction of the weaknesses would not be necessary before the Response would be considered further.



- c) **Satisfactory (3 Points Awarded):** The Bidder has presented and supported an approach that is considered to possibly meet the stated criteria. This rating indicates a level of risk to the MBTA. Weaknesses exist but may be corrected through requests for clarification.
- d) **Fair (2 Point Awarded):** The Bidder has presented and supported an approach that fails to meet stated criteria and would pose a clear risk to the MBTA. The issues may be susceptible to correction through major and lengthy discussions. Such a response is considered marginal in terms of the basic content or amount of information provided for evaluation.
- e) **Poor (1 Points Awarded):** The Bidder has presented and supported an approach that indicates significant weaknesses or unacceptable quality, or fails to include evidence that it is capable of providing the services requested. The Response fails to meet the stated criteria or lacks essential information. There is no reasonable likelihood of success; weaknesses are so major or extensive that a major revision to the Response would be necessary.

Bidders must obtain a minimum average score of 2.5 from the Selection Committee on each Technical Evaluation Criterion and rank among the top three highest Technical Proposal Scores in order to qualify for an on-site visit by MBTA.

The Bidders, which maintain a minimum average score of 2.5 from the Selection Committee on each Technical Evaluation Criterion after the on-visit re-evaluation and rank among the top three highest Technical Proposal Scores will progress to Price Proposal Evaluation.

This evaluation may, at MBTA's sole discretion, include requests for additional written information or clarification from any Offeror to assist in evaluation, including oral interviews, and references.

MBTA may, at its own expense and upon reasonable notice, visit and inspect current operations of the Offeror and/or any proposed subcontractors, including the premises, facilities, equipment, personnel and other resources, and carry out related appraisals as part of the Response evaluation.

Technical Proposals will be ranked in the order most closely aligned with MBTA's Evaluation Criteria. MBTA, in its sole discretion, reserves the right to limit the number of Proposals that are advanced to a Price Proposal Evaluation to those that MBTA deems most responsive to MBTA's requirements.

## **6.5 Price Proposal Responsiveness Review**

Price Proposals will be reviewed for responsiveness to RFP requirements, including (i) deficiencies and minor informalities, irregularities, and apparent clerical mistakes which are unrelated to the substantive content of the Response; (ii) conformance to the RFP instructions regarding organization and format; and (iii) the responsiveness of the Offeror to the requirements set forth in this RFP. MBTA may request Offeror clarification of any minor informalities, irregularities, and apparent clerical mistakes after which MBTA may evaluate the Response, at MBTA's sole discretion.

Those Price Proposals not responsive to this RFP may, at MBTA's sole discretion, be excluded from further consideration and the Offeror will be so advised.

## **6.6 Price Proposal Evaluation**

This evaluation may, at MBTA's sole discretion, include requests for additional written information or clarification from any Offeror to assist in evaluation. Price Proposals will be ranked, and this ranking may, at MBTA's sole discretion, include total cost of ownership analysis.



MBTA will, in its sole discretion, determine which Proposal or Proposals represents the “best value” based on an analysis of combined results of the Technical Proposal Evaluation and the Price Proposal Evaluation.

## **6.7 MBTA Reserved**

In connection with this RFP, the MBTA reserves to itself all rights (which rights shall be exercisable by the MBTA in its sole discretion) available to it under applicable laws, including without limitation, with or without cause and with or without notice, the right to:

1. Modify the RFP process in its sole discretion to address applicable law and/or the best interests of the MBTA.
2. Develop the work to be performed under the Contract in any manner that it, in its sole discretion, deems necessary. If the MBTA is unable to negotiate a Contract to its satisfaction with a Bidder, it may negotiate with the Bidder with the next highest ranked proposal, terminate this RFP and pursue other developments or solicitations relating to the work to be performed under the Contract, or exercise such other rights under the provisions of Massachusetts law as it deems appropriate.
3. Cancel this RFP in whole or in part at any time prior to the execution by the MBTA of a Contract, without incurring any cost, obligations, or liabilities.
4. Issue a new Request for Proposals after withdrawal of this RFP.
5. Not select any Bidder or cancel this procurement.
6. Reject any and all submittals and Responses received at any time.
7. Modify all dates set or projected in this RFP.
8. Terminate evaluations of Responses received at any time.
9. Exclude any potential Bidder from submitting any response to the RFP based on failure to comply with any requirements of those documents.
10. Suspend and terminate Contract negotiations at any time, elect not to commence Contract negotiations with any responding Bidder, and engage in negotiations with the Bidder with the next highest ranked proposal if negotiations are unsuccessful with the apparent successful Bidder.
11. Issue addenda, supplements, and modifications to this RFP.
12. Appoint an Evaluation Team to evaluate Responses, make recommendations to the MBTA FMCB and MassDOT Board of Directors, and seek the assistance of MBTA, MassDOT, and consultant technical experts in Response evaluations.
13. Require confirmation or clarification of information furnished by a Bidder, require revised or additional information from a Bidder concerning its Response, and require additional information to clarify the Response submitted in response to this RFP.
14. Conduct presentations with Bidders, identify a short-list of Bidders, and conduct on-site visits at Bidder facilities.
15. Declare a competitive range, conduct discussions, and request Response revisions and best and final offers.
16. Seek or obtain data from any source that has the potential to improve the understanding and evaluation of the responses to this RFP.
17. Add or delete Bidder responsibilities from the information contained in this RFP.
18. Waive deficiencies in a Response, accept and review a non-conforming Response, or permit clarifications, revisions, or supplements to a Response.



19. Negotiate with a Bidder without being bound by any provision in its Response, or choose to award and/or execute the Contract without negotiations.
20. Disqualify any Bidder that changes its submittal without MBTA approval.
21. Disqualify any Bidder under this RFP for violating any rules or requirements of the procurement set forth in this RFP or in any other communication from MBTA.
22. Delay issuance of notice to proceed after execution of the Contract.
23. Conduct all or any portion of the Scope of Work itself.
24. Exercise any other right reserved or afforded to the MBTA under this RFP.

This RFP does not commit the MBTA to enter into a Contract or proceed with the procurement described herein. The MBTA assumes no obligations, responsibilities, and liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by parties considering a response to and/or responding to this RFP. All of such costs shall be borne solely by each Bidder.

In no event shall the MBTA be bound by, or liable for, any obligations with respect to the work to be performed under the Contract until such time (if at all) as the Contract, in form and substance satisfactory to the MBTA, has been executed and authorized by the MBTA and, then, only to the extent set forth therein; provided, however, that the foregoing disclaimer in this sentence shall not apply to the obligations of the MBTA to the Bidders during the procurement process, which obligations are expressly set forth in this RFP. In submitting a Response to the RFP, each Bidder is specifically acknowledging these disclaimers.

## **6.8 Appeal/Protest Procedures**

Bid appeals/protests relative to this procurement will be reviewed and adjudicated in accordance with the MBTA's Appeals/Protest Procedure - Goods & Services.

## **7. CONTRACT STRUCTURE**

The contract ("Contract") between the MBTA and the winning Bidder shall be formed by the following sections ("Sections") of COMMBUYS # BD-21-1206-40000-40000-58175 and RFP # 13C-21 in order of precedence.

- A. Any change orders or amendments, the most recent having precedence
- B. Memorandum of Contract
- C. MBTA Standard Contract and Terms & Conditions
- D. RFP # 13C-21, Technical Specifications EE&QA-886, Drawings & Plans produced attendant to the Technical Specifications or otherwise
- E. Insurance Requirements
- F. Contractor Technical Proposal
- G. Contractor Price Proposal

## **8. MBTA STANDARD TERMS AND CONDITIONS**

Upon execution by the Contractor, these Terms and Conditions will be incorporated by reference into any Contract executed by the Contractor and the Massachusetts Bay Transportation Authority (MBTA), in the absence of a superseding law or regulation requiring a different Contract form. Performance shall include services rendered, obligations due, costs incurred, commodities and deliverables provided and accepted by the MBTA, programs provided or other commitments authorized under a Contract. A deliverable shall





include any tangible product to be delivered as an element of performance under a Contract. The MBTA is entitled to ownership and possession of all deliverables purchased or developed with MBTA funds.

The Bidder shall review Section 14 MBTA Standard Contract Terms and Conditions, sign and submit Sec 14.1 MBTA Terms and Conditions with their bid for the bid to be responsive and complete. Bidders do not sign the MBTA Standard Contract (Sec 14.0). When the MBTA plans to award contract, the MBTA designated Point of Contact will complete the MBTA Standard Contract Terms and Conditions and send it to the successful bidder for signature.

## **9. GUARANTEE OF END PRODUCTS (WARRANTY)**

### **9.1 Warranty Periods**

The Contractor must guarantee the following for all new OCS Inspection Car Consists:

- 9.1.1** The structure of the car body, underframe, and the truck frames for a period of 10 years from the date of Conditional Acceptance of each car.
- 9.1.2** Elastomers for the nominal component service life as defined by the elastomers' OEM.
- 9.1.3** All other pertinent parts for a period of two years from the date of Conditional Acceptance of each car / consist.
- 9.1.4** Replacement parts for two years from date of installation. In no case will the Warranty Period exceed three years from date of delivery of replacement parts.
- 9.1.5** All retrofits for the remainder of the Warranty Period or for two years from the date of retrofit completion per car, whichever is later.
- 9.1.6** All Special Tools, Capital Spares, and Test Equipment, for a period of two years from date of delivery.

### **9.2 Warranty Procedures**

Prior to delivery of the first OCS Inspection Car Consist, the Contractor must submit its proposed warranty procedures for MBTA review and approval.

### **9.3 General Requirements**

The Contractor must guarantee that Vehicles are in accordance with the Contract Documents when accepted, and must guarantee against defect due to faulty design, poor workmanship, or poor material during Warranty Periods. If any Vehicle or equipment parts prove defective during the respective Warranty Periods, MBTA will promptly notify the Contractor, and the Contractor must promptly repair or replace, as mutually agreed by both parties, such parts without expense to MBTA.

- 9.3.1** MBTA will give the Contractor Notice of the defects, grant the Contractor reasonable access to the defective parts, and will not alter the defective parts in any manner without the Contractor's knowledge.
- 9.3.2** The Contractor must maintain an on-site inventory of support materials necessary to address the defect, or within one week from notification of Warranty claim, deliver repaired or replacement parts. Prior MBTA authorization is required for a return period exceeding one week. Current MBTA material inventory or Spare Parts will not be available to comply with this requirement.
- 9.3.3** A report describing the analysis and corrective work performed must accompany all repaired parts returned to MBTA.
- 9.3.4** The Contractor must provide a failure analysis for each Warranty failure.



## **9.4 Identification and Correction of Defects**

The Contractor is responsible for all labor and material costs for defect identification and location; the removal, repair, or replacement of defective parts; and related alterations, repairs, tests, and adjustments made to obtain the specified Vehicle performance within the Warranty Periods.

- 9.4.1** In the event MBTA incurs extra costs, including Consultant costs, which are directly attributable to the Contractor's performance or lack thereof, the total extra costs for the related labor, materials, equipment and Consultant services are the sole responsibility of the Contractor. This includes Consultant efforts reviewing drawings, conducting inspections and monitoring Field Modification Instruction (FMI) procedures. This provision is not limited to this section, and is applicable to the entire Contract.
- 9.4.2** Whenever possible, MBTA will perform all corrective and Warranty work and services on MBTA's property by MBTA personnel. When this work is performed by MBTA, the Contractor must compensate MBTA for all expenses, including the cost of parts, material, tools, and the prevailing hourly labor rate. MBTA must not be charged for any required corrective and Warranty work.
- 9.4.3** Due to the regular maintenance demands on MBTA facilities and personnel, it may be possible for MBTA to undertake only minimal adjustment, repair, or replacement work on equipment prior to Acceptance. In such an event, the Contractor will be responsible for securing facilities and personnel to complete all additional work required for the duration of the Contract.
- 9.4.4** Any repair or retrofit work required under the Warranty must be accomplished with minimum disruption to MBTA's operations and maintenance.
- 9.4.5** In no case will any correction of defects in design, material, or workmanship take the form of an increase in maintenance requirement beyond that specified in the Contract Documents, described in the original edition of the maintenance instructions, approved in the baseline design, or submitted by the Contractor at the time of proposal.

## **9.5 Fleet Defects**

Where there are multiple occurrences of failure of a single warranted item, component, or system during the Warranty Period, MBTA may classify the total of such items as a failure (a Fleet Defect), including those items for which the Warranty Period expired before MBTA recognized the failure.

In such cases the Contractor is responsible for all costs of labor and material; defect identification and location; removal, repair or replacement of defective parts; and redesigns, alterations, repairs, tests and adjustments made to obtain vehicle performance identified in the Technical Specifications.

## **9.6 Warranty Extension**

If a vehicle is removed from operation for seven days or more for warranty repair or retrofit work, the duration of time the vehicle is removed from operation will extend the Warranty Period accordingly.

# **10. CHANGE ORDERS**

## **10.1 Proposed Changes in Work Scope**

- 10.1.1** MBTA may, at any time, direct and implement changes in work scope within the general scope of this Contract by issuing a written Change Order.
- 10.1.2** The Contractor must promptly make such additions, deletions, or changes in the work, when and as ordered in writing by MBTA.
- 10.1.3** The Contractor may, at any time, submit to MBTA in writing, for review and acceptance



or denial, proposed modifications to the Contract Documents which will benefit MBTA. MBTA will review and may accept such modifications. Upon acceptance by MBTA of the proposed changes, MBTA will execute and issue a Change Order. Denial of a proposed modification will neither provide the Contractor with any basis for claim for damages nor release the Contractor from contractual responsibilities.

- 10.1.4** Unless specifically noted in the Change Order, a change in work will not extend the time of completion of the Contract, change the Contract Price, nor amend the terms and conditions of the Contract Documents.
- 10.1.5** Where changes require the cooperation of one or more Manufacturers or Suppliers, the Contractor is responsible for such changes and must inform the Manufacturers and Suppliers accordingly, and the changes must be incorporated in all Vehicles unless otherwise agreed by MBTA.
- 10.1.6** MBTA's apparent waiver of, or failure to enforce, these provisions for any change in scope of work is not a waiver of requirements of this Part for any other change.

## **10.2 Costs for Work Scope Changes**

- 10.2.1** Upon receipt of an issued Change Order, the Contractor must, within 10 working days, give written Notice to MBTA with preliminary determination of how the proposed changes will impact the Project Schedule or Contract Price.
- 10.2.2** Within 30 days of receiving the Change Order, the Contractor must submit a written Notice to MBTA containing the following information:
  - 1. Description of change and details of work to be done.
  - 2. A statement of and justification for any additional time required for the completion of the Contract by reason of the Change Order. The statement must include a detailed schedule analysis identifying which schedule activities and key milestones are impacted.
  - 3. Comprehensive detail on price and costing for the Change Order, as per the following:
    - a. Prices must comply with the standards of the Federal Acquisition Regulation (FAR) Part 31 and be based on generally accepted cost standards as established under the FAR, to include material, labor, overhead and profit.
    - b. The cost detail must be comprehensive and readily traceable into the Contractor's accounting records and underlying supporting documentation.
    - c. The Contractor's profit must be disclosed separately, so that a judgment can be made relative to the reasonableness given the technical level of work and the associated risk. Profit will be allowed up to a maximum of 10% of the direct cost elements for labor, fringe benefits, and overhead; and up to a maximum of 5% for direct cost elements of material, equipment and other.

## **10.3 Change Order Authorization**

The Contractor must not proceed with any work out of the scope of the Contract until MBTA gives written authorization. MBTA will not accept any responsibility whatsoever for work or services performed without specific proper authorization.

## **10.4 Executed Change Orders**

- 10.4.1** All Change Orders must be executed in accordance with the terms and conditions of the Contract Documents and MBTA's policies and procedures.



- 10.4.2** All executed Change Orders become part of the Contract and will constitute the entire agreement between MBTA and the Contractor regarding any and all costs and time extensions related to Change Order work.
- 10.4.3** All terms and conditions of the Contract Documents, including the Specifications, remain as previously stated unless so noted in the text of an executed Change Order.
- 10.4.4** The Contractor must issue invoices for executed Change Orders on a per vehicle basis at the milestone corresponding to the Conditional Acceptance of said vehicle or at the Conditional Acceptance of the incorporation of the defined work scope, whichever occurs last. Payment will be made in accordance with Section 13.

## **10.5 Change Status Report**

- 10.5.1** The Contractor must maintain a record of all Engineering and Contractual Change Orders that have been submitted or accepted by MBTA.
- 10.5.2** Changes must be logged and listed on a Change Status Report that identifies the action taken on each change. The Change Status Report must be updated at least monthly and copies submitted to the Contracting Officer, the Project Manager/Engineer, and the Consultant.
- 10.5.3** A separate report must be updated and submitted quarterly showing the original and revised Contract Price per Vehicle and delineating all additions on a per item and per Change Order basis. The format of this report must be approved by the Contracting Officer.

## **11. CONTROL OF PROCUREMENT**

### **11.1 Engineering Support**

- 11.1.1** The Contractor shall furnish the services of one or more, as mutually agreed upon, qualified, factory trained, English-speaking, Field Service Engineer(s) promptly when requested by the Authority for assistance during inspection, operation, testing and adjustment of the Contractor furnished equipment, to insure satisfactory performance, and to advise a reasonable number of the MBTA's employees in the proper use and care of the equipment.
- 11.1.2** The cost of the Field Service Engineer(s) shall be included in the Contract Price.
- 11.1.3** The Contractor shall have a Service Engineer at the MBTA's facility, within 24 hours of receipt of request for service, during a time period from delivery of the first OCS Inspection Car Consists to one year from Conditional Acceptance of the last OCS Inspection Car Consist, and within 72 hours of receipt of request for service during the warranty period.
- 11.1.4** The Contractor shall supply, upon request by the MBTA, the design engineer(s) of equipment failing to comply with the Contract and Technical Provisions. Said engineer(s) shall attend and participate in meetings, recommend solutions and, if requested by the MBTA, shall assist in implementing these solutions.

### **11.2 Quality Assurance Program**

- 11.2.1** The Contractor shall establish and maintain an effective Quality Assurance Program and staff to ensure the vehicles and all parts thereof meet, and are in full compliance with, all Specification requirements.
- 11.2.2** The Contractor shall also require each Subcontractor and Supplier to maintain an effective Quality Assurance Program for the items it furnishes to the Contractor.



- 11.2.3** The Contractor shall submit to the MBTA for acceptance, a finalized and detailed written Quality Assurance Plan as required by the Technical Specifications.
- 11.2.4** The Contractor shall supply, upon request by the MBTA, the design engineer(s) of equipment failing to comply with the Contract and Technical Provisions. Said engineer(s) shall attend and participate in meetings, recommend solutions and, if requested by the MBTA, shall assist in implementing these solutions.
- 11.2.5** The MBTA shall have the right to audit and verify compliance with the Quality Assurance Plan throughout the Contract at the Contractor, Subcontractor, and Supplier facilities. The Contractor shall coordinate with Subcontractors/Suppliers for Authority audits on an individual basis. The Quality Assurance of material provided will be the sole responsibility of the Contractor.
- 11.2.6** The costs of the MBTA's inspections and compensation to MBTA inspection personnel and authorized representatives shall be the responsibility of the MBTA, and no provision for these costs shall be included in the proposal prices.

### **11.3 Contractor Furnished Facilities**

The Contractor shall furnish and maintain, at Contractor's expense, facilities for the use of the MBTA's representatives for the duration of the Contract at the Contractor's production facilities and final assembly/final staging area if applicable. Facilities shall include at a minimum:

- 11.3.1** A private office with tumbler lock sized for a minimum three representatives.
- 11.3.2** Full lighting, heating, and air conditioning.
- 11.3.3** Private telephone and high-speed Internet access.
- 11.3.4** Standard office desks with swivel chairs.
- 11.3.5** Access to facility restroom and breakroom facilities.
- 11.3.6** Direct access during normal working hours to office by automobile with dedicated parking.
- 11.3.7** Access to a printer/copier machine.
- 11.3.8** Additional space as required for additional MBTA representatives during site visits, First Article Inspections, etc.

### **11.4 Concept Plans and Drawings**

- 11.4.1** MBTA-provided Concept Plans, Drawings, and Reference Information are included in the Technical Specifications. These may be supplemented as required. The Contractor must perform the work required by such supplements without additional compensation, except as provided by the Contract.
- 11.4.2** MBTA makes no express or implied representation or warranty of merchantability or fitness for a particular purpose, or any other obligations or liability on the part of MBTA as to MBTA's existing vehicles, sketches, drawings, mock-ups, books, manuals, or prints. MBTA neither assumes nor authorizes any other person to assume for it any other liability in connection with these materials, which will be used for reference purposes only.

### **11.5 Contractor's Drawings**

- 11.5.1** Drawings must be prepared and submitted in accordance with the requirements outlined in the Technical Specifications.
- 11.5.2** Review by the MBTA or its representatives of the Contractor's drawings does not relieve the Contractor or any Subcontractor of the responsibility for full compliance with the



Contract requirements; for correctness of dimensions, clearances, and material quantities; for proper design of details; for proper fabrication and construction techniques; for proper coordination with Subcontractors; and for providing all devices required for safe and satisfactory construction and operation.

- 11.5.3** The Contractor shall maintain, and update as required, a log listing all drawings by number and title and showing dates of preparation, submission, preliminary and final acceptance, and shall submit revised copies of the log to MBTA monthly.
- 11.5.4** Contractor's standard drawings (drawings not prepared specifically for this Contract) shall be furnished with the MBTA's title and application blocks applied adjacent to the Contractor's title blocks.
- 11.5.5** MBTA may exercise its right of First Article Inspection as a further review to confirm the validity of the Contractor's design and shop drawings.
- 11.5.6** Acceptance of the Contractor's drawings and data by MBTA shall be for general detail and arrangement only, and shall not relieve the Contractor of any responsibility including, but not limited to, responsibility for accuracy of dimensions and details. The Contractor shall remain responsible for agreement and conformity of its drawings and data to the Contract Documents and Technical Specifications.
- 11.5.7** The level of information and detail of as-built drawings/manuals/manufacturing specifications must allow MBTA to source any part on the OCS Inspection Car Consist in the event that the original supplier is unresponsive, unable, or unwilling to provide replacement parts for reasonable cost and lead time. Furthermore, in the event the MBTA secures the manufacture or replacement of an assembly or component for use in maintaining the vehicles, the OEM shall not be responsible for errors, defects, or damage attributable solely to the negligent or intentional actions or omissions of the non-OEM entity.
- 11.5.8** All measurements shall be in English dimensions; and the dimensions shall be expressed in inches and fractions of an inch for less than one foot; feet, inches, and fractions of an inch for dimensions greater than a foot; or in decimal inches.
- 11.5.9** Metric dimensions, if applicable, shall be included on drawings shown parenthetically either following or under the English dimensions. Metric dimensions smaller than one (1) meter shall be shown in millimeters and dimensions one (1) meter and larger shall be shown in meters and decimal meters.

#### **11.6 As-Built Drawings, Manuals, and Specifications for Final Records**

- 11.6.1** The Contractor must submit as-built drawings, manuals, and manufacturing specifications as final record documentation.
- 11.6.2** As-built drawings, manuals, and manufacturing specifications must include all information necessary for MBTA to operate, maintain, and repair the Vehicles.
- 11.6.3** The level of information and detail must allow MBTA to source any part on the Vehicle in the event that the original supplier is not able to provide replacement parts.
- 11.6.4** As-built drawings, manuals, and manufacturing specifications must incorporate all engineering, manufacturing, and installation changes and reflect the final configuration of the Vehicle. All Change Orders and approved deviations from the Technical Specifications must be listed.



## **11.7 Conformity with Technical Specifications**

- 11.7.1** No deviation from the Technical Specifications may be made unless authorized in writing by MBTA through the prescribed Change Order/waiver process.
- 11.7.2** The Contractor must track any open requests for deviation pending resolution and submit it to MBTA monthly.
- 11.7.3** Any change which can affect the Contract cost, Contract time or schedule for completion, or involves a change in material, design, or selection of equipment previously accepted must be addressed by Change Order to the Contract, in accordance with Section 10.
- 11.7.4** The Contractor must not take advantage of any error or omission in the Contract Documents. In the event the Contractor discovers an error or omission, the Contractor must notify MBTA within three working days. MBTA will make corrections and interpretations as it deems necessary to fulfill the Contract intent.

## **11.8 Assigning or Subcontracting**

- 11.8.1** The Contractor must give its full attention to the fulfillment of the Contract and must keep the work under its control, as well as directing, monitoring and coordinating all necessary liaisons between its Subcontractors/Suppliers to ensure the successful completion of the Contract.
- 11.8.2** The Contractor must ensure that each Subcontractor has a complete copy of the Contract Documents, including the Technical Specifications and all appendices, and that has access to referenced government and industry standards cited in the Specifications.
- 11.8.3** The Contractor is responsible for the compliance of its Subcontractors/Suppliers with the requirements of all applicable federal, state, and municipal laws, ordinances, rules and regulations; as well as adherence to all MBTA Contract Document requirements.
- 11.8.4** Every Subcontractor/Supplier of major equipment requires MBTA approval. Further, the Contractor must not sublet, sell, transfer, assign, or otherwise dispose of the Contract or any portion thereof, or its right, title, or interest therein, if the cost exceeds 10% of the Contract cost, without MBTA approval.  
  
In requesting such approval, the Contractor must notify MBTA of the proposed Subcontractor/Supplier and proposed work to be performed by them.  
  
Any consent to sublet any part of the work will not be construed as an acceptance of the subcontract or any of its terms, but only as acceptance of the making of a subcontract between the Contractor and Subcontractor/Supplier.
- 11.8.5** Neither subcontract nor transfer of Contract releases the Contractor of its liability under the Contract and Performance Guarantee.
- 11.8.6** The Subcontractor will be recognized only in the capacity of an employee or agent of the Contractor.
- 11.8.7** The Contractor is responsible for all liability to persons providing services for payment of charges or related to compensation for services rendered under this Contract.
- 11.8.8** The Subcontractor will look only to the Contractor for the payment of claims arising out of any subcontract. The Contractor must include in all agreements with Subcontractors/Suppliers, as pertaining to this Contract, that its Subcontractor/Supplier will make no claim for payment against MBTA, its members or agents, for any work performed or thing done by reasons of the Subcontract, or for any other cause for payment that may arise by reason of the relationship created between the Contractor and the



Subcontractor/Supplier by the subcontract.

- 11.8.9** The Contractor must maintain and provide to MBTA a list of Subcontractors and Suppliers for all equipment, assemblies, sub-assemblies and components.

## **11.9 Project Meetings**

- 11.9.1** Meetings shall generally be held as scheduled by the MBTA, via conference call or at a mutually agreed upon location, at which time the Contractor shall be present to discuss any and all details as required relative to the execution of the work. The Authority reserves the right to increase or decrease the number of meetings.
- 11.9.2** Manufacturers, Subcontractors, Suppliers and/or other representatives, as determined necessary by the MBTA, shall be present at any such meetings.
- 11.9.3** The Authority will keep detailed minutes of all meetings, including but not limited to the following information:
1. Date, time and location;
  2. Attendees, including titles and affiliations;
  3. Subjects discussed, and agreements reached;
  4. Drawings and sketches submitted for review.
  5. Action taken or assigned.
- 11.9.4** Draft minutes will be prepared and reviewed for any corrections, after which final copies will be retained electronically per established document control procedures.

## **11.10 Communication and Correspondence Control**

- 11.10.1** All correspondence, conversations, drawings, data, submittals, or other written communications pertaining to this Contract must be in the English language.
- 11.10.2** In order to preclude misunderstandings and delays in the procurement process arising from language differences, MBTA requires that representatives of the Contractor who serve as official liaisons to MBTA be sufficiently fluent and versed in speech, writing, and understanding of the English language so as to facilitate easy and comprehensive communication. MBTA reserves the right of rejection of any representative of the Contractor who is found by MBTA to be so deficient in their ability to communicate in English as to be prejudicial to MBTA's best interest.
- 11.10.3** All monies expressed must be in United States dollars.
- 11.10.4** Official communications in connection with this Contract must be made in writing, and delivered and maintained electronically as required by MBTA. Refer to e-Builder Project Management System Requirements.
- 11.10.5** All correspondence and submittals must be made via numbered and coded letter.
- 11.10.6** Telephone calls, project meetings, discussions, and reviews may be used to expedite communications, but will not be considered official communication unless confirmed in writing.
- 11.10.7** A Correspondence Control Log shall be developed by the Contractor and must be submitted monthly.

## **11.11 e-Builder Project Management System Requirements**

This section specifies e-Builder, a comprehensive Project and Program Management system that shall be





used for managing documents, communications, and costs for the contract/project. This web-based application is a collaboration tool, which will allow all project team members continuous access through the Internet to important project data as well as up to the minute decision and approval status information.

E-Builder shall be used for managing documents, communications and costs for the Project. E-Builder will be used for all Project actions including, but not limited to: creation and management of meeting events; creation, distribution, and archiving of meeting minutes; initiation, review, comment/address and finalization of submittals and RFIs/RFPs; initiation, review, comment/address and finalization of NCRs; uploading, storing, transferring, archiving, distributing and managing all project documents; initiation, review, comment/address and finalization of any document review forms or processes; initiation, updating, and finalization of invoices and partial pay requests; creation and management of a high-level milestone schedule; creation and management of the project contact list; and initiation, archiving, distribution and finalization of all project correspondence.

The Contractor shall submit and maintain all contract documentation and manage the contract/project utilizing the e-Builder project management system to its fullest capabilities unless otherwise directed or approved by the Authority in writing. The Contractor must use the Authority's file naming convention within e-Builder. The Authority reserves the right to make amendments to these requirements at any time during the course of the project.

#### **11.11.1 Equipment**

The Contractor shall make available, on a daily basis, to its staff assigned to the contract, all computer and communication resources necessary to achieve full e-Builder functionality.

The Authority shall provide a license to the Contractor on an as needed basis.

1. Each user license is for access to the site consisting of unlimited data storage. Users can be direct employees of the Contractor as well as its Subcontractors and/or Suppliers.
2. Training will be provided by the Authority as required at no additional cost to the Contractor.

#### **11.12 Access to Work and Records**

- 11.12.1** The MBTA shall have access, at any time during the Contractor's normal working hours, to the premises used by the Contractor, to any plant or place where materials, work, or any part thereof, are being made, performed, or stored.
- 11.12.2** MBTA shall arrange for inspections so as to avoid or minimize delay to the work.
- 11.12.3** Access, at any time during working hours upon proper notification to the Contractor by the Authority, shall also be granted for inspection of all accounting and project management records and documents of the Contractor and its suppliers, relating to any labor, materials, plant, equipment, overhead and other costs used in the performance of work done or contracted for the Authority, including work described in any Change Order.
- 11.12.4** Access shall be given or obtained both before and after completion of this Contract for the duration of the guarantee period.
- 11.12.5** The Contractor shall retain, for change orders and claims, all accounting records and supporting documentation evidence required to demonstrate compliance with generally accepted accounting principles and the Federal Acquisition Regulation cost standards. Project management records shall also be retained.
- 11.12.6** The Contractor shall insert a clause containing all of the provisions of this Section, including this paragraph, in all subcontracts of at least \$50,000 under this contract, altering the clause only as necessary to identify properly the contracting parties.



## 11.13 Intellectual Property Rights

### 11.13.1 Definitions

For purposes of this Section 11.13.1, the following capitalized terms have the meanings set forth below. Other capitalized terms are defined in context or elsewhere in these Contract Documents.

1. **Authorized Contractor.** A third party that (i) has agreed to protect Contractor confidential information in a manner at least as protective as the Contractor's rights under the Contract Documents, and (ii) MBTA has engaged the third party to provide services or goods to MBTA.
2. **Contribution.** Input to a Deliverable (whether such input is in written, oral, electronic, or other form) that embodies (i) a protectable Intellectual Property (IP) Right of the party making the Contribution, or (ii) a protectable IP Right of a licensor to the party making the Contribution.
3. **Deliverable.** Goods, services, and information the Contractor is obligated to deliver to MBTA under the Contract Documents, including (without limitation) Vehicles, parts, design and support services, End Products, Licensed Software, and Documentation.
4. **Deposit Materials.** The technology and other materials that: (i) Constitute Source Code for the Licensed Software; (ii) are necessary for the maintenance, interoperability and interchangeability of components within and for MBTA's fleet of Vehicles and any Deliverables, but that the Contractor has not provided to MBTA in order to protect the Contractor's designated (a) trade secrets, or (b) confidential information; or (iii) the Contract Documents may require the Contractor to deposit in escrow, including but not limited to, all software source code and associated tools for its modification required by the Technical Specifications.
5. **Documentation.** Materials that meet the following criteria: the materials (a) constitute (i) user manuals, maintenance manuals, or training materials, (ii) product descriptions or specifications (including performance standards), (iii) technical manuals or supporting materials, (iv) related materials, or (v) any other materials contemplated under these Contract Documents; and (b) are called for, or set out in the Contract Documents. By way of clarification, and not limitation, the term Documentation includes all drawings, shop drawings, plans, blueprints, and other graphic depictions.
6. **Error.** A defect in the Licensed Software that is reproducible and causes the Licensed Software not to function substantially in conformance with the Documentation, applicable warranties, or commonly accepted principles as defined by industry standards.
7. **Error Correction.** A modification or addition that, when made or added to the applicable code section of the Licensed Software, (i) removes the Error, or (ii) otherwise establishes material conformity to applicable functional specifications. The term Error Correction expressly excludes Workarounds.
8. **IP Rights.** Copyrights, patent rights, trade secret rights and any other rights to exclude existing from time to time in a jurisdiction under patent law, copyright law, trademark law, unfair competition law, moral rights law, trade-secret law, or other similar law.
9. **IP Deliverables.** Deliverables that embody IP Rights that meet the following two criteria: the IP Rights embodied in the Deliverable (i) are not owned by MBTA, under the Contract Documents or otherwise, and (ii) are necessary for MBTA to use, maintain, repair, or otherwise act with respect to Deliverables defined as such in this RFP.
10. **Licensed Software.** (i) All software called for in the Technical Specifications, and (ii), all other software and firmware that the Contractor delivers or is obligated to deliver pursuant to the Contract Documents, or that which is contemplated under the Contract Documents. For purposes of clarification, and not limitation, the term Licensed Software includes all software and firmware related to: (a) on-board diagnostics, (b) system diagnostic systems, (c) portable test equipment; and (d) the central diagnostics system.



11. **Maintenance Rights Event.** The occurrence of one or more of the following events: (i) Contractor fails to provide warranty or maintenance services for an IP Deliverable, as required under the Contract Documents, (ii) the Contractor is unable to provide warranty, maintenance, manufacturing or other required services with respect to an IP Deliverable; or (iii) Contractor declines to provide such services at a reasonable cost as determined by MBTA, with the reasonableness of the cost determined by an independent third party assessment.
12. **Non-Software Deliverables.** IP Deliverables that do not consist of Licensed Software.
13. **Software Deliverables.** IP Deliverables that consist of Licensed Software.
14. **Software Maintenance Term.** See Section 11.13.4.1.
15. **Source Code.** Computer programming source code (and related source code level system documentation, reasonable programmers' notes, comments and procedural code such as job control language, if any) which may be printed out or displayed in a form readable and understandable by a programmer of ordinary skill in the applicable programming language(s). By way of clarification, and not limitation, the term "Source Code" means the preferred form of the code for making modifications to it, including all modules it contains, plus any associated interface definition files, and scripts used to control compilation and installation of an executable. With such Source Code, at a minimum the Deposit Materials must include related libraries, other source components, compilers, and linkers so that, when compiled, linked and otherwise manipulated to create the runtime/executable image for the Licensed Software, such materials create a complete and fully operational run-time/executable version of the Licensed Software.
16. **Workaround.** A bypass, procedure or routine that meets the following three criteria: the bypass, procedure or routine (i) when implemented, eliminates the adverse effect of the Error without material loss of performance, function or feature, (ii) its implementation and utilization does not require unreasonable effort on the part of MBTA; and (iii) is a temporary solution. The term "Workaround" expressly excludes Error Corrections.

#### **11.13.2 Grant of Rights to MBTA**

1. **Grant of Rights to Use IP Deliverables.** In consideration of MBTA's obligations under the Contract Documents, the Contractor hereby grants to MBTA, under the Contractor's IP Rights, a non-exclusive, royalty-free, irrevocable, perpetual license to use, run, execute, and operate IP Deliverables for all purposes permitted in the Documentation, and for all purposes contemplated under the Contract Documents.
2. **Grant of Rights to Maintain IP Deliverables**
  - a. **Maintenance Rights for Non-Software Deliverables.** In consideration of MBTA's obligations under the Contract Documents, and upon the occurrence of a Maintenance Rights Event, the Contractor hereby grants to MBTA, under the Contractor's IP Rights, a non-exclusive, royalty-free, irrevocable perpetual license to repair, maintain, modify, retrofit, manufacture and use Non-Software Deliverables (including, but not limited to, any assembly or component); provided such rights are exercised strictly (a) for MBTA's internal purposes, and (b) for purposes of maintenance, interoperability or interchangeability of components within and for MBTA's fleet of Vehicles.
  - b. **Maintenance Rights for Software Deliverables.** In consideration of MBTA's obligations under the Contract Documents, and upon the occurrence of a Maintenance Rights Event, the Contractor hereby grants to MBTA, under the Contractor's IP Rights, a non-exclusive, royalty-free, irrevocable, perpetual license to repair, maintain, modify, retrofit and use Software Deliverables; provided such rights are exercised strictly (a) for MBTA's internal purposes, and (b) for purposes of maintenance, interoperability or interchangeability of components within and for MBTA's fleet of Vehicles.



- c. **Delivery of and Rights in Application Programming Interfaces (APIs).** Upon MBTA's reasonable request, and irrespective of the occurrence of a Maintenance Rights Event, the Contractor must provide MBTA with APIs between relevant components of Deliverables, to allow MBTA to coordinate deliverables with other components of MBTA's transit services and systems. In consideration of MBTA's obligations under the Contract Documents, the Contractor hereby grants to MBTA, under the Contractor's IP Rights, a non-exclusive, royalty-free, irrevocable, perpetual license to use, copy, modify and distribute the APIs, for MBTA's internal purposes and use.
3. **Grant of Rights in Documentation.** In consideration of MBTA's obligations under the Contract Documents, the Contractor, under its IP Rights, hereby grants to MBTA a non-exclusive, worldwide, irrevocable, perpetual license to, copy, modify, perform, display, distribute, use, create derivative works from, and otherwise exploit the Documentation (in print-based, digital, or other format) in connection with uses permitted under the Contract Documents including, but not limited to, purposes of maintenance, interoperability or interchangeability of components within and for MBTA's fleet of Vehicles.
4. **Limitations; Identification of Third-Party Licensors.** MBTA acknowledges and agrees that the Contractor's grant of rights to MBTA pursuant to Section 11.13.2 is limited to the extent of Contractor's applicable IP Rights in the IP Deliverable. By way of clarification, and not limitation, such rights do not include a grant to modify Licensed Software where the Contractor does not hold underlying rights (a) to modify, or (b) to grant MBTA the right to modify. Upon MBTA's reasonable request, the Contractor must, in sufficient detail, (i) identify third party licensors of applicable IP Rights, and (ii) provide applicable license terms.
5. **MBTA Engagement of Third Parties.** In consideration of MBTA's obligations under the Contract Documents, MBTA will be entitled to permit Authorized Contractors to exercise MBTA's rights under this Section 11.13.2.5. MBTA shall require Authorized Contractors to assume full responsibility and liability for the acts and omissions of such Authorized Contractors, and MBTA shall cause such Authorized Contractors to comply with all obligations, limitations, conditions and restrictions applicable to MBTA under the Contract Documents.
6. **Software and Hardware Design Escrow**
- a. **General.** Within 30 days from Contract execution, MBTA and the Contractor will execute a Third Party Escrow Agreement.
- 1) The Contractor and Suppliers may request that design details and source code files for specific hardware and software items be placed in escrow account in lieu of submittal to MBTA.
    - a) Such requests must be made within 300 working days of NTP and are subject to MBTA approval.
    - b) Information required for planned maintenance and operations will not be allowed to be placed in escrow.
  - 2) The escrow account will be established and confirmed by joint signature of the Escrow Agreement.
  - 3) The Contractor is solely responsible for all costs related to the Escrow Agreement.
  - 4) The Contractor must employ a third-party escrow firm to verify and hold drawings, programs, source code, and supporting documentation for MBTA. The length of holding (the "Escrow Period") shall be 30 years following conditional acceptance of the final OCS Inspection Car Consist. All Deposit Materials held in escrow at the expiration of the Escrow Period shall be returned to the Contractor. The Contractor may elect to terminate the escrow account at any



point during the Escrow Period. However, terminating the escrow account prior to expiration of the Escrow Period shall result in all Deposit Materials being provided to the MBTA.

- 5) The escrow package must be kept current with all source code and document revisions through the Escrow Period.
  - 6) Any documentation provided in an electronic media and format must identify the application program in which it is supplied. A copy of the application program must be supplied for any software that is not commercially available off-the-shelf.
  - 7) Upon release of the Deposit Materials in accordance with the Escrow Agreement, MBTA will have a non-exclusive, royalty-free, irrevocable, perpetual license to reproduce, modify, distribute, display, perform, use, create derivative works from, and otherwise exploit the Deposit Materials; provided such license is exercised strictly: (i) for MBTA's internal purposes, (ii) for purposes of maintenance, interoperability or interchangeability of components within and for MBTA's fleet of Vehicles; or (iii) as otherwise may be necessary for MBTA to exercise any of its rights under the Contract Documents. MBTA will maintain the confidentiality of the released Deposit Materials pursuant to the Contract Documents to the extent permitted by law.
- b. **Subcontractors.** The Contractor acknowledges and agrees that it is solely responsible for ensuring that all Subcontractors it engages to fulfill any of the Contractor's obligations under the Escrow Agreement agree to be bound by the Escrow Agreement.
- c. **Escrow Availability.** The escrow agent will be directed to convey all Deposit Materials in escrow to MBTA for its own use within 10 working days of notification by MBTA for any of the following reasons:
- 1) The Contractor or its Supplier is no longer in business, or no longer supports the product and has not transferred the design rights to another entity that supports the product.
  - 2) The Contractor, its Supplier, or any successor no longer supports the product at a reasonable cost, based on an independent third-party assessment.
  - 3) Contractor default, bankruptcy, product or product support termination, or market abandonment.
- d. **Software Escrow**
- 1) For all software placed in escrow, the Contractor must place in escrow for MBTA complete copies of all software source code and supporting software documentation developed for or used within the equipment or software applications delivered during the project, at the time of Delivery. For software not owned by the Contractor, MBTA, at its discretion, will work with the Contractor to include adequate protections.
  - 2) Source code files must be provided in an electronic form and medium as directed by MBTA, with complete hard copy documentation.
  - 3) Prior to placing software in escrow, the Contractor must demonstrate fulfillment of Technical Specification requirements. Such demonstration must be performed by the Contractor and witnessed by MBTA for all software in escrow.
  - 4) The Contractor must demonstrate that all software and developmental tools are included in the escrow package to generate loadable software from the source code and that the files generated are identical to the files used in final tests of the corresponding system.
- e. **Hardware Design Escrow**



- 1) Any hardware design details approved by MBTA for placement in escrow in lieu of submittal to MBTA must provide sufficient design detail to allow MBTA to operate and maintain the hardware, including but not limited to: replacing obsolete components, modifying functionality, and troubleshooting hardware issues.
- 2) The Contractor must conduct a hardware verification procedure for all escrowed hardware design details. These must verify that escrow documents match the actual hardware delivered as part of the Contract. For circuit board layout, the procedure must verify that all software and developmental tools required to modify and generate the printed circuit board manufacturing files have been escrowed.
- 3) For all hardware designs placed in escrow, the Contractor must place in escrow for MBTA complete copies of:
  - a) Printed circuit assembly layouts.
  - b) Parts lists complete with Suppliers and Suppliers' parts numbers fully identified.
  - c) Specifications for materials, components, fabrication, and assembly.
  - d) Interface definitions and requirements.
  - e) Test procedures including programs for automated testing.
  - f) Firmware.
  - g) Any applicable software not otherwise placed in escrow, including: source code, libraries, other source components, compilers, and linkers. Software must be provided in an electric form and medium as directed by MBTA, with complete hard copy documentation.

#### **11.13.3 Contractor Rights**

1. **MBTA Contributions; MBTA Ownership.** The Contractor acknowledges and agrees that, as between the Contractor and MBTA, MBTA owns all rights, title and interest in and to MBTA Contributions (and all associated IP Rights). MBTA hereby grants to the Contractor, under MBTA's IP Rights, a limited, non-exclusive, non-transferable, non-sublicensable license to use MBTA Contributions solely for the purpose of fulfilling the Contractor's obligations under the Contract Documents. Notwithstanding the above, IP Rights resulting from MBTA contribution to the licensed software may be granted to the Contractor upon negotiation of reasonable compensation to MBTA.
2. **Grant of Limited Trademark Rights to Contractor.** In consideration of the Contractor's obligations under the Contract Documents, MBTA, under its IP Rights, hereby grants to the Contractor (i) for as long as the Contractor is manufacturing Deliverables on which **MBTA Trademark Assets are to be affixed pursuant to (a) the Contract Documents, or (b)** MBTA's request, or (ii) earlier if requested by MBTA; a limited, non-exclusive, non-transferable, non-sublicensable license to affix MBTA Trademark Assets to applicable Deliverables for MBTA's use under the Contract Documents. The Contractor acknowledges the value of the goodwill associated with MBTA Trademark Assets and acknowledges that any and all use of MBTA Trademark Assets pursuant to these Contract Documents will inure to the benefit of MBTA.

#### **11.13.4 Licensed Software Maintenance and Support**

During the Software Maintenance Term (as defined in Section 11.13.4.1), and in consideration of MBTA's obligations set out in these Contract Documents, the Contractor must provide the maintenance and support services described in this Section 11.13.4 (collectively, the **Support Services**).



1. **Software Maintenance Term.** The term “**Software Maintenance Term**” means collectively (a) the Bundled-Software Maintenance Term, and (b) the Stand-Alone Software Maintenance Term, as defined below.
  - a. **Bundled Software.** With respect to Licensed Software that is used in conjunction with Non-Software Deliverables (including, but not limited to, End Products), the Contractor must provide Support Services for such Licensed Software for the duration of the warranty period applicable to the associated Non-Software Deliverable (the “**Bundled Software Maintenance Term**”). By way of example, and not limitation, the Contractor must provide Support Services for Licensed Software used in conjunction with the operation of a Vehicle during the warranty period for that particular Vehicle.
  - b. **Stand-Alone Software.** The Contractor must provide Support Services for Licensed Software that is used independently of Non-Software Deliverables for a minimum of five years from Acceptance of the applicable Licensed Software as set out in these Contract Documents (the “**Stand-Alone Software Maintenance Term**”).
  - c. **Resolving Doubt.** Any uncertainties as to whether a Licensed Software module is entitled to Support Services under 11.13.4., will be resolved in favor of the reading that provides a longer period of Support Services for the particular module.
2. **Helpdesk Support**
  - a. **MBTA Representatives.** All requests for Support Services will be submitted to the Contractor by one of four MBTA representatives, who will be identified to the Contractor by MBTA in writing within a reasonable time after the Effective Date (each, an **MBTA Representative**). MBTA has the right to revise the list of MBTA Representatives. The Contractor has no obligation to respond to service requests from any MBTA employee that is not an MBTA Representative.
  - b. **Helpdesk Support Hours.** The Contractor must provide helpdesk support via telephone and e-mail from the hours of 8:00 a.m. to 6:00 p.m. EST, Monday through Friday (excluding Federal holidays) (the “**Business Hours**”). The Contractor must provide off-hours cell phone support for Priority 1 Errors.
3. **Problem/Error Inquiries and Reports**
  - a. **Reporting.** An MBTA Representative must:
    - 1) Report an Error or problem inquiry to the Contractor in a form as may be reasonably prescribed by the Contractor;
    - 2) Submit such form via telephone line, fax, e-mail, by accessing a website maintained by the Contractor for such purpose, or via any other format and method reasonably required by the Contractor; and
    - 3) Provide other documentation, information or assistance reasonably requested by the Contractor.
  - b. **Responses.** Upon receipt of a problem report or inquiry, the Contractor must:
    - 1) Acknowledge receipt of a problem report or inquiry;
    - 2) Evaluate the inquiry and assign a priority level per Section 11.13.4.c.;
    - 3) Provide advice to resolve the problem described in the inquiry; and
    - 4) Call in appropriate staff as necessary to respond to the situation in accordance with the Acknowledgement and Resolution Standards in Section 11.13.4.e;



- c. **Assigning Priority.** The Contractor must work with the applicable MBTA Representative to assign the appropriate priority to all reported problems, per the following criteria:

<b>Problem Priority</b>	<b>Conditions</b>
Priority 1 (High)	<b>Critical business impact.</b> (i) MBTA has a complete loss of function, (ii) MBTA experiences material real or perceived data loss or corruption; or (iii) an essential part of the Licensed Software is unusable by MBTA.
Priority 2 (Medium)	<b>Some business impact.</b> The problem seriously affects the functionality of the Licensed Software, but can be circumvented so that most of the significant functionality is available to MBTA.
Priority 3 (Low)	<b>Minimal business impact.</b> MBTA can circumvent the problem and use the Licensed Software with only slight inconvenience. This priority level is also used for questions, comments, and requests.

- d. **Tracking.** The Contractor must ensure Error-related calls and incidents are tracked through an incident tracking system.
- e. **Acknowledgment and Resolution Standards.** For all reported problems, the Contractor's acknowledgement and problem resolution times are as follows:

<b>Problem Priority</b>	<b>Acknowledgment Time</b>	<b>Timeframe for Workaround</b>	<b>Contractor's Response</b>
Priority 1 (High)	1 Hour	6 Hours	First priority attention to the problem until a Workaround is provided.
Priority 2 (Medium)	4 Business Hours	12 Business Hours	Second priority attention to the problem until a Workaround is provided.
Priority 3 (Low)	1 Working Day	14 Working Days	Provision of Workaround.

- f. **Workarounds.** The Contractor must use commercially reasonable efforts to provide Workarounds for Errors that are reported by an MBTA Representative within the target timeframe for the assigned priority level. In the event the Contractor foresees an inability to provide a Workaround remedying the reported Error within the applicable target timeframe, the Contractor must increase resources appropriately and continue its efforts. Each incident must remain open until MBTA determines, in its sole and reasonable discretion, that the incident has been resolved. Upon MBTA's request, the Contractor must provide updates on the status of Workarounds.
- g. **Error Corrections.** Upon the Contractor's provision of a Workaround, the Contractor must commence developing an Error Correction to provide a permanent resolution to the applicable Error, and must provide all proposed Error Corrections to MBTA within a reasonable time after the original Error was reported. All Errors will be considered open until MBTA accepts the Error Correction.





4. **Third Party Software.** The Contractor must use reasonable commercial efforts attempting to diagnose and resolve problems associated with third party software for no additional fee. If the problem is internal to the third party software, and not the Licensed Software, then the Contractor will be deemed to have satisfied its obligation to address the problem if: (a) the Contractor releases the ticket to the third party vendor, (b) such vendor is obligated to provide support; and (c) the Contractor continues to track and report the status of the fix to MBTA.
5. **Updates.** Without limiting its obligations to provide Error Corrections, the Contractor may choose to deliver updates, upgrades or new versions of the Licensed Software to MBTA; provided that no such delivery removes any feature or functionality of the Licensed Software, or otherwise reduces its performance.
6. **Support for Prior Versions.** For so long as any of the Contract Documents are in effect, and for the duration of the Software Maintenance Term, the Contractor must continue to provide Support Services to MBTA for the version of the Licensed Software provided by the Contractor under these Contract Documents, or such other version or release provided by the Contractor that MBTA, in its discretion, chooses to implement.
7. **Cooperation; Limitations.** MBTA must make available upon request by the Contractor access to MBTA's existing infrastructure to allow the Contractor to provide Support Services, including access by remote means. The Contractor is solely responsible for all connectivity-related charges. Support Services will not include services (i) resulting from misuse, or (ii) resulting from modification, customizations, additions or extensions to the Licensed Software in a manner not authorized by the Contractor in writing or not otherwise contemplated under these Contract Documents.

#### **11.13.5 Software Assurances and Warranties**

Both MBTA and Contractor agree that the Contractor's assurances and warranties relating to the operation, quality, and compliance with the Documentation that apply to Deliverables under these Contract Documents similarly apply to the Licensed Software.

#### **11.13.6 Indemnification**

Subject to the provisions of this Section 11.13.6, the Contractor will defend, indemnify, and hold MBTA harmless from and against any liability, claim, suit, action, proceeding, damage, cost or expense (including, but not limited to, reasonable attorney's fees) resulting from or relating to any claim that any of the Deliverables infringes a third party's IP Rights or rights existing under trademark law.

1. **Contractor Options.** In the event that a Deliverable is held or reasonably believed to constitute infringement of a third party's IP Rights or trademark rights or the use of such Deliverable is enjoined, the Contractor must, at its own option and expense, and in order to mitigate damages, either:
  - a. Procure the same rights for MBTA in the Deliverable as MBTA has under these Contract Documents;
  - b. Replace the Deliverable with a functionally equivalent, non-infringing substitute; or
  - c. Modify the Deliverable so it becomes non-infringing but remains functionally equivalent.
2. **Limitations.** The Contractor will not be liable to MBTA for indemnification obligations under this Section 11.13.6 to the extent the claim or damage is caused by:
  - a. MBTA's failure, within a reasonable timeframe, to use corrections made available to MBTA by the Contractor; or
  - b. The creation of modifications to the Deliverable at issue that were not authorized by the Contractor or reasonably contemplated under these Contract Documents.
3. **Conditions.** The Contractor's obligations to indemnify are conditioned upon MBTA:



- a. Giving the Contractor prompt notice of any claim, action, suit or proceeding for which MBTA is seeking indemnity;
  - b. Granting control of the defense and settlement to the Contractor; and
  - c. Reasonably cooperating with the Contractor at the Contractor's sole expense.
4. MBTA is entitled to participate in any defense at its own expense with counsel of its own choosing.

#### **11.13.7 No Implied Licenses**

Any licenses granted to either the Contractor or MBTA must be expressly provided herein, and there will be no licenses or rights implied pursuant to these Contract Documents, based on any course of conduct, or other construction or interpretation thereof. All rights and licenses not expressly granted are reserved.

#### **11.13.8 Acceptance of Licensed Software**

The Contractor acknowledges and agrees that the Acceptance for the Licensed Software will be handled in manner consistent with MBTA's Acceptance procedures for all other Deliverables and as may otherwise be set out in the Contract Documents; provided, however that MBTA may, in its sole and reasonable discretion, require additional Acceptance criteria and procedures for the Licensed Software.

#### **11.13.9 Survival**

Notwithstanding anything to the contrary, the provisions of this Section 11.13.9 will survive the termination or expiration of these Contract Documents.

### **12. CONTROL OF MATERIALS**

#### **12.1 Quality of Supply**

- 12.1.1** The Contractor must furnish all materials required for the production and Delivery of OCS Inspection Car Consists in accordance with the Contract Documents, and the materials must meet the requirements of the Technical Specifications.
- 12.1.2** Unless otherwise provided, only quality materials which are generally accepted in the industry and conform to the requirements of these Specifications will be used in the work.
- 12.1.3** The Contractor must report to MBTA in writing any MBTA-supplied items that are lost, damaged or degraded, and is responsible for the costs associated with their repair or replacement.

#### **12.2 Trade Names and Alternative Materials**

##### **12.2.1 Trade Names**

For convenience in designation on the Plans or in the Specifications, certain articles or materials may be designated under trade names or the names of manufacturers and catalog information.

1. Specifying a brand name, components, or equipment in the Specifications does not relieve the Contractor from its responsibility to produce the product in accordance with the contractual requirements.
2. The Contractor must notify MBTA of any inappropriate brand name, component or equipment called for in the Specifications, and must propose a suitable substitute for consideration.

##### **12.2.2 Alternative Materials**

It is not the intent of the Specifications to have the Contractor seek acceptance from MBTA for the various interchangeable commodity items of different manufacture that are normally stocked and used by the Contractor. The intent is that alternative materials for Major Equipment be acceptable to MBTA. The use



of an alternative article or material which the Contractor represents to be of at least equal quality and of the required characteristics for the purpose intended will be permitted, subject to the following requirements.

1. The Contractor must furnish all information necessary and as required by MBTA to prove the quality and suitability of alternative materials, at no additional cost to MBTA.
2. The Contractor must bear the cost of all testing required to prove the quality of the proposed material.
3. All requests by the Contractor regarding the use of an alternative material must be in writing. Such requests must be made in ample time to permit approval without delaying the work.
  - a. Requests must be accompanied by technical information and data substantiating the equivalence of the proposed alternative material to the specified material and demonstrating that it meets Specification requirements.
    - 1) Whenever classifications, rating, or other certification by a body, such as UL, NEMA, or AREMA, is part of the Specifications for any material, proposals for use of alternative materials must be accompanied by reports from the listed or equivalent independent testing laboratory indicating compliance with Specification requirements.
  - b. Requests must contain an initial estimate of the effect on the Contract price and schedule of implementing the proposed change.
  - c. Where use of an alternative material involves redesign of or changes to other parts of the work, the cost and the time required to effect such redesign or changes will be considered in evaluating the suitability of the alternative material.
  - d. The Contractor must reasonably demonstrate in its request that an adequate supply of any proposed alternative materials will be available promptly as the need by MBTA may arise.
4. The Contractor must not take action relating to incorporation of the proposed alternative until designs are incorporated by approval of a formal Change Order into the Specifications.
  - a. MBTA may require the removal of any substitute or unaccepted item which is installed by the Contractor without the written acceptance of MBTA.
5. Any financial benefits accruing from the substitute materials, components, design, or fabrication will be split between MBTA and the Contractor on a 70%/30% MBTA/Contractor split respectively.
6. Other than costs established in the approved Change Order, no additional costs will be paid by MBTA as a result of the Contractor using alternatives.

### **12.3 Patented Devices, Materials, and Processes**

**12.3.1** Where MBTA requires the Contractor to furnish items not designated by brand name, the Contractor warrants that the products furnished are delivered free of any rightful claim of a third party for infringement of any United States or foreign patent.

1. The Contractor must defend, or may settle, at its expense, any suit or proceeding against MBTA based on a claimed infringement which would result in a breach of this warranty, if MBTA provides authorization, information, and assistance upon the Contractor's notification to MBTA in writing.
2. The Contractor must pay all damages and costs awarded against MBTA due to the breach. In case any product, or part thereof, is in such suit held to constitute an infringement and the use for the purpose intended of such product or part is enjoined, the Contractor must, at its expense and option, procure for MBTA the right to continue using said product or part; replace it with some non-infringing product or part; modify it so it becomes non-infringing; or remove the product and refund the purchase price,



less reasonable depreciation for any period of use and any transportation costs separately paid by MBTA. Any removal must not impact the Vehicle's functionality.

- 12.3.2** After termination of the Warranty applying to the last Vehicles delivered, MBTA will assume the right to manufacture, or cause to be manufactured, any assembly or component for its sole use in maintaining Vehicles without incurring any obligation to pay any royalties or fees in relation to a letter of patent or copyrights, except when said assembly or component is manufactured by a third party other than the Contractor or the original manufacturer. Except for the patented devices, the Contractor will not have exclusive proprietary rights pertaining to the design of the Vehicles.
- 12.3.3** The Contractor must grant to MBTA and its authorized successors and assigns, a perpetual, fully paid, royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use on MBTA-owned equipment, and to authorize others to use the End Product for MBTA's purposes of operating, maintaining and repairing Vehicles.
- 12.3.4** The Contractor and its Suppliers must not destroy castings, patterns, and forming or extrusion dies at any future date without first offering MBTA the opportunity to purchase them. The Contractor is responsible to notify MBTA in these cases.

#### **12.4 First Article Inspections and Tests**

- 12.4.1** Manufacture of First Article parts must not commence until MBTA approves the design.
- 12.4.2** MBTA has the right to attend any and all FAIs.
- 12.4.3** If a subject part is not approved at FAI, the Contractor must promptly implement changes to make the subject part compliant.
- 12.4.4** If, during the vehicles' manufacture, MBTA or the Contractor find any item which is not in accordance with the Contract Documents, no further or similar non-conforming work may be done by the Contractor or the Subcontractor.
- 12.4.5** The control and disposition of non-conforming work must be in accordance with the approved QA Manual and QAP and as required by the Specifications.
- 12.4.6** MBTA reserves the right to inspect and approve each component and any completed part of the work before similar work is undertaken to comply with the manufacturing schedule. Any discrepancies or variations from the Specifications or drawings, except those previously approved, must be corrected prior to proceeding with the manufacture and assembly of systems, subsystems or components, or the installation of any such systems, subsystems, and components on the vehicles.
- 12.4.7** Each vehicle shall be tested as required by the Technical Specifications. All costs associated with testing of the vehicles shall be at the expense of the Contractor.

#### **12.5 Storage of Materials and Preparation for Shipment**

##### **12.5.1 Storage of Materials**

All materials intended for use on vehicles must be marked and stored in the Contractor's plant so as to be readily identified, and must be adequately protected during storage, handling, and shipment to prevent damage.

##### **12.5.2 All Shipments**

The following conditions apply to the shipment of all vehicles, equipment, Spare Parts, materials, and other physical assets furnished by the Contractor.

1. The Contractor must notify MBTA prior to shipment of any item.



2. All items must be securely packaged to prevent damage during shipment and handling.
3. If shipped by sea, all materials must be protected against damage from handling or exposure to the Marine environment.
4. The Contractor is entirely responsible for any damage that occurs prior to Delivery.

### **12.5.3 Vehicle Shipments**

The following additional conditions apply specifically to the shipment of all vehicles furnished by the Contractor:

1. Vehicles must not be shipped until the Contractor's authorized representative has certified that all testing at the Contractor's facilities has been completed as specified in the Technical Specifications and the Contractor has presented a fully executed Release for Shipment.
2. Prior to the shipment of each Vehicle, the Contractor must obtain a Certificate of In-Plant Inspection and Release for Shipment signed by MBTA, or other authorized representative at the Contractor's plant.
  - a. The Certificate must certify that the vehicle is complete and complies with the approved Contractor's Drawings and samples, and other agreed upon conditions for shipment.
  - b. The Certificate of In-Plant Inspection and Release of Shipment must not be construed nor inferred to constitute to any degree vehicle Acceptance by MBTA.
  - c. The Contractor must allow one working day for MBTA to complete inspection of each vehicle prior to shipment.
3. If vehicles are complete and ready for shipment prior to the Delivery dates specified in the Contract, the Contractor must notify MBTA. At MBTA's option, the vehicles may be shipped early.
4. All vehicle parts that must be removed to permit shipment, and those items not permanently secured to a vehicle, must be securely boxed to prevent damage, and shipped in or with the vehicle to which they belong.

## **12.6 Receipt and Delivery of Materials and Vehicles**

**12.6.1** The Contractor must complete and deliver all equipment and materials defined in the Contract Documents to MBTA designated locations as follows:

1. MBTA, Green Line – Riverside Carhouse, 331 Grove Street, Newton, MA 02462
2. MBTA, Blue Line – Orient Heights Carhouse, 26 Barnes Avenue, East Boston, MA 02128
3. Alternate locations within the MBTA's System as designated by MBTA.

**12.6.2** Hours of delivery must be coordinated with the Authority and be between 7:30 a.m. and 3:00 p.m. – Monday through Friday only, excluding Saturday, Sunday, and Holidays. Delivery outside of specified hours above must be approved by the MBTA prior to execution of delivery.

**12.6.3** Delivery must be made per the approved Master Program Schedule and in accordance with the Contract Documents.

**12.6.4** The Contractor and MBTA must conduct a joint receiving inspection on each shipment as soon as practical after each arrives on MBTA property. The receiving inspection must confirm that the shipment is complete, and that no obvious damage occurred during shipping.



1. MBTA's representative and the Contractor's representative must sign a Receiving Inspection Report documenting the condition of the shipment and acknowledging Receipt of the shipment.
2. On receipt of any Receiving Inspection Report which indicates a short shipment or damaged item, the Contractor must promptly fulfill the requirement for any missing equipment and replace any damaged equipment and material to prevent delay of the project. "Promptly" means in-stock items are shipped immediately, while the re-manufacture or re-purchase of all other items are initiated without delay.

**12.6.5** The Contractor must bear all risks of loss to each item until it is Delivered to MBTA.

**12.6.6** Delivery of materials, equipment, Spare Parts, and other physical assets must be made in sufficient quantity and balance to commence with Delivery of the first vehicle. Delivery of materials, Spare Parts, and other physical assets must be completed in conjunction with Delivery of the last vehicle in the Contract.

**12.6.7** From the time the vehicles arrive on MBTA property until such time as they are accepted by MBTA for service, the Contractor will be charged at the prevailing rates of the MBTA, in effect at that time, if any work is performed on behalf of the Contractor.

**12.6.8** To be considered "delivered," each vehicle, subsequent to receipt at MBTA designated facility, must be in a sound, whole, ready-to-run/ready-to-test condition, ready for acceptance testing, and compliant with the Technical Specifications. Should the MBTA agree to allow vehicles to be shipped onto its property with retrofit work to be done, the vehicles shall not, unless otherwise agreed upon by MBTA, be considered to be "delivered" until the Contractor has satisfactorily completed all such work.

**12.6.9** The Contractor shall be responsible for all vehicle-related costs incurred during the "shipment," "receipt" and delivery of the vehicles.

**12.6.10** When the Contractor determines that each vehicle has arrived on MBTA property in a condition suitable for delivery, it must be examined jointly by representatives of MBTA and the Contractor. MBTA will then issue a Delivery Inspection Report to the Contractor which acknowledges delivery of the vehicle and notates the condition. The Delivery Inspection Report must be signed by MBTA's representative and the Contractor's representative to attest to the stated condition of the vehicle.

## **12.7 Acceptance of Vehicles**

**12.7.1** When all Testing required by the Technical Specifications has been successfully performed, any corrective actions and retrofits have been fully completed, and the vehicle is considered by MBTA to be in full compliance with the Contract and ready for service, a final Certificate of Acceptance will be executed by the Contractor and MBTA.

**12.7.2** Acceptance on behalf of MBTA must be made in writing.

**12.7.3** If MBTA determines that a vehicle is suitable for operation, but is not totally responsive to the Specification requirements such that substantial delay might be incurred in implementing required corrective actions, MBTA may, at its discretion, issue a Certificate of Conditional Acceptance for the vehicle for mutual execution by MBTA and the Contractor. Such Conditionally Accepted vehicles must then be available to MBTA for use in operation until the Contractor initiates and executes the necessary corrective actions.

## **12.8 Repairs After Non-Acceptance**

### **12.8.1 Repairs by Contractor**



1. If the Authority requires the Contractor to perform repairs after non-acceptance of the Vehicles, the contractor's representative must begin work within five (5) working days after receiving notification from the Authority of failure of acceptance tests. The Authority shall make the bus available to complete repairs timely with the Contractor's repair schedule.
2. The Contractor shall provide, at its own expense, all spare parts, tools, and space required to complete the repairs. At the Authority's option, the Contractor may be required to remove the Vehicle from the Authority's property while repairs are being effected. If the Vehicle is removed from the Authority's property, repair procedures must be diligently pursued by the Contractor's representatives, and the Contractor shall assume risk of loss and insure the vehicle for 100% of its Contract value while the Vehicle is under its control.

#### **12.8.2 Repairs by MBTA**

1. **Parts Used:** If the Authority decides to perform the repairs after non-acceptance of the Vehicle, it shall correct or repair the defect and any related defects using Contractor specified parts available from its own stock or those supplied by the Contractor specifically for this repair.
2. **Contractor Supplied Parts:** If the Contractor supplies parts for repairs being performed by the Authority after non-acceptance of the Vehicle, these parts shall be shipped prepaid to the Authority from any source selected by the Contractor within ten (10) working days after receipt of the request for said parts.
3. **Return of Defective Components:** The Contractor may request that parts covered by this provision be returned to the manufacturing plant. The total cost for this action shall be paid by the Contractor.
4. **Reimbursement for Labor:** The Authority shall be reimbursed by the Contractor for all labor at the MBTA prevailing wages.
5. **Reimbursement for Parts:** The Authority shall be reimbursed by the Contractor for defective parts that must be replaced to correct the defect. The reimbursement shall include taxes where applicable, and fifteen percent (15%) handling costs.

#### **12.9 Training Material and Test Equipment**

- 12.9.1** Shipment of Training Materials and Test Equipment shall be coordinated so that they are delivered and in operating condition for training and maintenance purposes prior to the delivery of the first OCS Inspection Car Consist.
- 12.9.2** Delivery of Training Materials and Test Equipment shall be made to MBTA at one or more of the designated locations to be determined by MBTA. The Contractor shall bear all risk of loss to each unit until the same is delivered to MBTA.

#### **12.10 Spare Parts**

- 12.10.1** The Contractor must make all reasonable efforts to ensure the availability of replacement parts for the OCS Inspection Car Consists for a minimum of 15 years after the date of Acceptance. Spare Parts must be interchangeable with the original equipment and must be manufactured in accordance with the Quality Assurance Provisions of this Contract.
- 12.10.2** If a part is not available through the Contractor, and has no competitive equivalent available in the marketplace, the Contractor must assist MBTA in developing drawings and specifications to facilitate component procurement by MBTA, within 180 days of the Contractor or MBTA identifying that the part is not available.
- 12.10.3** All Spare Parts, Capital Spare Parts, and Consumable Spare Parts must be clearly and precisely labeled in accordance with the following bar code requirements. All bar codes will be in Code 39 (according to ANSI standards). All assemblies, subassemblies and



components shall have an identification label, which contains a part number, a serial number, and bar code of vendor part number and sequential serial number. The label life efficiency shall be the same as the part to which it is attached.

- 12.10.4** Spare Parts must be interchangeable with their corresponding part numbers.
- 12.10.5** All Spare Parts must be reconfigured to the latest revision during the Warranty period.
- 12.10.6** The Contractor must make all efforts to have available at least two U.S. sources for Spare Parts.
- 12.10.7** Packaging must consider the reliability of the parts and the requirements for inspection and inventory (e.g., packaging selected for highly reliable parts must be such that the parts can be identified, inspected, stored for long periods, and endure multiple inventories).
- 12.10.8** The Contractor must submit a recommended Spare Parts list which includes grouping by system, or subsystems, as applicable, for stocking identification; generic name, trade name, description, Contractor's part number, Contract price, Manufacturer/Vendor/Supplier names and part numbers (if not directly produced by the Contractor), drawing references, and correlation with maintenance manuals.
- 12.10.9** MBTA will confirm quantities of Capital Spare Parts by line item within 29 months after NTP. MBTA reserves the right to adjust the quantities listed.
- 12.10.10** As a result of any design modifications confirmed and approved during testing, MBTA reserves the right to negotiate the Capital Spares to be supplied within the cost parameters of the Contract, as required.
- 12.10.11** MBTA's intent is to minimize the need to retrofit Capital Spares. Any retrofit, if so required, must be implemented at the Contractor's expense.
- 12.10.12** The price paid by the MBTA for a Capital Spare and/or other Spare Part will, in no event, exceed the published parts price, where applicable.
- 12.10.13** The Contractor shall delivery a sufficient quantity and balance of capital spare parts, as agreed to by the Authority, delivery of the first Work Car. Delivery of remainder of materials shall be completed in conjunction with delivery of the last Work Car in the Contract.
- 12.10.14** Upon delivery of Capital Spares, the Contractor must provide part number information, vendor/manufacturer/supplier name, line item quantities, and unit price per line item. If providing spares or any parts under the designation "Vehicle Set (VS)", the Contractor shall provide details (part numbers, vendor source, line item quantities, unit pricing of line items and other relevant data) for the Authority's asset inventory reconciliation.
- 12.10.15** The Contractor must submit a Consumable Spare Parts List, including U.S. sources for each.

### **13. COMPENSATION**

#### **13.1 Purchase Orders**

- 13.1.1** Ordering under the Contract shall take place by means of MBTA's submission of a Purchase Order. Purchase Order or any ordering tools whether online or offline follow the content and structure, pursuant to the Terms and Conditions of the Contract to Contractor for specific Work. Upon MBTA's submission of a Purchase Order and subsequent Contractor's acceptance hereof, an agreement between MBTA and Contractor is formed subject to the terms of this Contract and the Purchase Order.





- 13.1.2** Throughout the term of the Contract, the Contractor shall ensure the availability of sufficient resources and expertise and in all be obligated to provide Work in the amount and quality ordered by MBTA in Purchase Orders under the Contract without any restrictions. Contractor shall not be entitled to in whole or in part reject delivery under a Purchase Order.

## **13.2 Payment Terms**

- 13.2.1** In the event the Contractor has subcontracted any of the work, prior to final payment, the Contractor shall furnish valid Waiver and Release of Lien documents in a form acceptable to the Authority for the work performed or the equipment or material furnished by each Subcontractor.
- 13.2.2** The acceptance by the Contractor for the final payment shall operate as and shall be a release of the Authority and every member, agent, and employee thereof, from all claim and liability to the Contractor for anything done, furnished for, or relating to the work, or for any act or neglect of the Authority or any person relating to or affecting the work. The payment of the final Milestone will not be processed until all open issues have been resolved.
- 13.2.3** Payments will be made by check, wire transfer, or ACH within 30 days after receipt of properly prepared Contractor's invoice and upon completion of the milestone corresponding to the payment due.
- 13.2.4** Milestone payments shall be achieved and become eligible for payment only in the sequential order listed.
- 13.2.5** Milestone payments will be made based upon a percentage of work completed. The Contractor shall certify at the completion of each milestone the amount of cumulative actual cost incurred by the Contractor. The Contractor shall separately itemize all payments made and cumulative cost incurred by its subcontractors performing work under this Contract with each milestone certification.
- 13.2.6** If an OCS Inspection Car Consist does not meet all of the requirements set forth in the Technical Specifications, the Authority may, at its exclusive option, "Conditionally Accept" the OCS Inspection Car Consist and place it into operation pending receipt of Contractor furnished materials and/or labor necessary to effectuate corrective action.
- 13.2.7** In order for payments to be issued, the Contractor must have submitted all required progress reports, schedules, tracking documents, and other periodic deliverables within the 30-day period before invoice submittal.
- 13.2.8** The Contractor will adjust the overall price and corresponding milestone invoices to reflect any executed change orders.
- 13.2.9** In no event shall the amount of invoices to the Authority at the time of each milestone exceed the accumulated payment milestones to that date. If an audit should disclose any invoices exceeding this value, the excess shall be returned to the Authority and shall be remitted to the Contractor at such time as those milestones are completed.
- 13.2.10** Failure by the Contractor to maintain an effective project team and/or to manage the project progress shall be considered cause for withholding milestone payments.
- 13.2.11** The Contractor shall prepare an invoice for approved change order(s) on an individual vehicle basis and become eligible for payment at the time of Conditional Acceptance of each vehicle.



### 13.3 Payment Milestones

The following shall apply to each Purchase Order for Work covered by the Scope of Work.

Payment No.	Incremental	Accumulative	Payment Milestone
A	7.0%	7.0%	Approval of Program Management Plan [TS CDRL 16.1.2]
B	5.0%	12.0%	Approval of Preliminary Design Review [TS CDRL 16.4.4.1]
C	5.0%	17.0%	Approval of Intermediate Design Review [TS CDRL 16.4.4.2]
D	10.0%	27.0%	Approval of Final Design Review [TS CDRL 16.4.4.3]
E	10.0%	37.0%	Completion and Approval of First Article Inspections
F	5.0%	42.0%	Approval of Maintainability Demonstration & Training
G	25.0%	67.0%	Delivery and Conditional Acceptance of 1 <sup>st</sup> OCS Inspection Car Consist
H	20.0%	87.0%	Delivery and Conditional Acceptance of 2 <sup>nd</sup> OCS Inspection Car Consist
I	8.0%	95.0%	Delivery and Approval of all Maintenance Manuals & Completion of all Training [TS Sections 17.1 and 17.2]
J	5.0%	100.0%	Completion of the Contract including but not limited to receipt of “as-built” drawings, and closeout of all open items. Completion of all outstanding retrofits for all cars, delivery of all Capital Spares, Special Tools, and completion of all administrative and technical matters with the exception of the Contractor’s warranty obligations.





We confirm that our Bid is in exact accordance with the solicitation with no exceptions to, or comments upon, the solicitation documents. We confirm that the submission of our Bid with the signature below makes all certifications as outlined in the solicitation documents. This Bid shall constitute a binding offer open for acceptance by the MBTA.

We confirm that this Bid has been prepared and is compliant with the solicitation instructions and agree to conduct ourselves in accordance with the solicitation. We confirm receipt of all addenda related to this solicitation. We confirm the 180 days Acceptance Period of this Proposal.

The undersigned are authorized to sign on behalf of and to bind \_\_\_\_\_ (include Bidder's name) to the provisions of this Bid.

Bidder (company name): \_\_\_\_\_

Authorized Representative Name: \_\_\_\_\_

(BLOCK LETTERS)

Authorized Representative's Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Form A: Pre-Award Bidder Evaluation Data Form**

Pre-Award Bidder Evaluation Data			
<b>Name of Firm:</b>			
<b>Federal Identification Number:</b>			
<b>Legal Address:</b>			
<b>Contact Name:</b>			
<b>Telephone Number:</b>			
<b>Email:</b>			
<b>Please select one:</b> <input type="checkbox"/> Individual <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Joint Venture			
<b>Date Organized:</b>		<b>State Incorporated:</b>	
<b>Names of Officers or Partners:</b>			
<b>Please provide details of any litigation, suits, or court action taken or pending against Bidder below:</b>			
<b>Please provide the following information that demonstrates that the Bidder together with its selected Affiliates and or Subcontractors has the required capabilities to successfully execute the Work. Please submit as attachments the following requested documents:</b>			<b>Check Attachment</b>
Articles of Incorporation			<input type="checkbox"/>
Audited financial statements for the last 3 financial years			<input type="checkbox"/>
Attach, if applicable, a list of similar current contracts that demonstrates your technical proficiency, each with contract value amount, name of contracting party, type of work completed, and percentage of work complete to date.			<input type="checkbox"/>
Attach, if applicable, a list of all principal subcontractors and the percentage and nature and value of work each will perform on this project. Principal items of work shall include, but not be limited to, those listed in the solicitation.			<input type="checkbox"/>



Please provide answers to the following questions:	Check Answer
Do you have any outstanding indebtedness or unsecured loans or debts or trading losses not reported within the financial reports?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Do you have any contracts over the last two years that were assessed liquidated damages or termination for non-performance?	Yes <input type="checkbox"/> No <input type="checkbox"/>

If the Bidder or subcontractor is a joint venture, submit this Pre-Award Bidder Evaluation Data form for each member of the joint venture.



## Form B-1: Price Proposal

Item	Quantity	Description of Equipment	Delivered Unit Price	Total Price
1.	2	New OCS Inspection Car Consist in accordance with MBTA Technical Specification EE&QA-886	\$ _____	\$ _____
2.	LOT	OCS Inspection Car Consist Capital Spare Parts in accordance with form B-1-a		\$ _____ (LOT Price carried forward from Form B-1-a)
3.		Total for Items 1-2	\$ _____ TOTAL (Sum of Items 1-2)	

### Form B-1-a: Recommended Capital Spare Parts Price Proposal

Form B-1-a shall be inclusive of all costs to procure and deliver the Bidders recommended Capital Spare Parts to the MBTA. Form B-1-a shall be completed as an itemized cost for each recommended Capital Spare Parts. The items listed on this Form shall match the list the Bidder provided in the Technical Proposal under Schedule T-2. Bidder may add or subtract line items in the table below as necessary.

**NOTE:** The MBTA reserves the right to purchase Capital Spare Parts either as a total package or on an individual-item basis, and/or to increase or decrease quantities listed, whichever is in the best interest of the MBTA. The price paid by the MBTA for a Spare Part will, in no event, exceed the published parts price where applicable.

Item	Quantity	Unit	Description	Unit Price	Total Price
1				\$ _____	\$ _____
2				\$ _____	\$ _____
3				\$ _____	\$ _____
4				\$ _____	\$ _____
5				\$ _____	\$ _____
6				\$ _____	\$ _____

Bidder name:

Bidder signature:



Bidder is not to sign MBTA Standard Contract. MBTA will complete and send to Awarded Bidder.

#### 14. Massachusetts Bay Transportation Authority Standard Contract

<b>CONTRACTOR LEGAL NAME:</b> (and d/b/a):		Massachusetts Bay Transportation Authority (MBTA)	
<b>Legal Address: (W-9, W-4,T&amp;C):</b>		10 Park Plaza Boston, MA 02116	
<b>Contract Manager:</b>		<b>Billing Address (if different):</b>	
<b>E-Mail:</b>		<b>Contract Manager:</b>	
<b>Phone:</b>	<b>Fax:</b>	<b>Email:</b>	
<b>Contractor Vendor Code:</b>		<b>Phone:</b>	
<b>Vendor Code Address ID (e.g. "AD001"):</b> AD		<b>RFR/RFP/IFB/Procurement or Other ID Number:</b>	
(Note: The Address Id Must be set up for EFT payments.)			
<b>NEW CONTRACT</b> <b>PROCUREMENT OR EXCEPTION TYPE: (Check one option only)</b> <input type="checkbox"/> <b>Statewide Contract</b> (OSD or an OSD-designated Department) <input type="checkbox"/> <b>Collective Purchase</b> (Attach OSD approval, scope, budget) <input checked="" type="checkbox"/> <b>MBTA Procurement</b> Attach RFR/RFP/IFB and Response or other procurement supporting documentation <input type="checkbox"/> <b>Emergency Contract</b> (Attach justification for emergency, scope, budget) <input type="checkbox"/> <b>Contract Employee</b> (Attach <u>Employment Status Form</u> , scope, budget) <input type="checkbox"/> <b>Legislative/Legal or Other:</b> (Attach authorizing language/justification, scope and budget)		<b>CONTRACT AMENDMENT</b> Enter <b>Current Contract End Date</b> <u>Prior</u> to Amendment: _____, 20__. Enter <b>Amendment Amount:</b> \$_____. (or "no change") <b>AMENDMENT TYPE:</b> (Check one option only. Attach details of Amendment changes.) <input type="checkbox"/> <b>Amendment to Scope or Budget</b> (Attach updated scope and budget) <input type="checkbox"/> <b>Interim Contract</b> (Attach justification for Interim Contract and updated scope/budget) <input type="checkbox"/> <b>Contract Employee</b> (Attach any updates to scope or budget) <input type="checkbox"/> <b>Legislative/Legal or Other:</b> (Attach authorizing language/justification and updated scope and budget)	
The MBTA Terms and Conditions (T&C) have been executed, and are incorporated by reference into this Contract.			
<b>COMPENSATION:</b> (Check ONE option): The MBTA certifies that payments for authorized performance accepted in accordance with the terms of this Contract <input type="checkbox"/> <b>Rate Contract</b> (No Maximum Obligation. Attach details of all rates, units, calculations, conditions or terms and any changes if rates or terms are being amended.) <input type="checkbox"/> <b>Maximum Obligation Contract</b> Enter Total Maximum Obligation for total duration of this Contract (or <b>new</b> Total if Contract is being amended). \$_____.			
<b>PROMPT PAYMENT DISCOUNTS (PPD):</b> MBTA payments are issued through EFT 45 days from invoice receipt. Contractors requesting <b>accelerated</b> payments must identify a PPD as follows: Payment issued within 10 days _____% PPD; Payment issued within 15 days _____% PPD; Payment issued within 20 days _____% PPD; Payment issued within 30 days _____% PPD. If PPD percentages are left blank, identify reason: agree to standard 45-day cycle only initial payment (subsequent payments scheduled to support standard EFT 45-day payment cycle. See Prompt Pay Discounts Policy.)			
<b>BRIEF DESCRIPTION OF CONTRACT PERFORMANCE or REASON FOR AMENDMENT:</b> (Enter the Contract title, purpose, fiscal year(s) and a detailed description of the scope of performance or what is being amended for a Contract Amendment. Attach all supporting documentation and justifications.)			
<b>ANTICIPATED START DATE:</b> (Complete ONE option only) MBTA and Contractor certify for this Contract, or Contract Amendment, that Contract obligations: <input type="checkbox"/> 1. May be incurred as of the <u>Effective Date</u> (latest signature date below) and <b>no</b> obligations have been incurred <b>prior</b> to the <u>Effective Date</u> . <input type="checkbox"/> 2. May be incurred as of _____, 20____, a date <b>LATER</b> than the <u>Effective Date</u> below and <b>no</b> obligations have been incurred <b>prior</b> to the <u>Effective Date</u> . <input type="checkbox"/> 3. were incurred as of _____, 20____, a date <b>PRIOR</b> to the <u>Effective Date</u> below, and the parties agree that payments for any obligations incurred prior to the <u>Effective Date</u> are authorized to be made either as settlement payments or as authorized reimbursement payments, and that the details and circumstances of all obligations under this Contract are attached and incorporated into this Contract. Acceptance of payments forever releases the MBTA from further claims related to these obligations.			
<b>CONTRACT END DATE:</b> Contract performance shall terminate as of _____, 20____, with no new obligations being incurred after this date unless the Contract is properly amended, provided that the terms of this Contract and performance expectations and obligations shall survive its termination for the purpose of resolving any claim or dispute, for completing any negotiated terms and warranties, to allow any close out or transition performance, reporting, invoicing or final payments, or during any lapse between amendments.			
<b>CERTIFICATIONS:</b> Notwithstanding verbal or other representations by the parties, the " <b>Effective Date</b> " of this Contract or Amendment shall be the latest date that this Contract or Amendment has been executed by an authorized signatory of the Contractor, the MBTA, or a later Contract or Amendment Start Date specified above, subject to any required approvals. The Contractor makes all certifications required under the attached <u>Contractor Certifications</u> (incorporated by reference if not attached hereto) under the pains and penalties of perjury, agrees to provide any required documentation upon request to support compliance, and agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein according to the following hierarchy of document precedence, the applicable MBTA Terms and <u>Conditions</u> , this Standard Contract Form including the <u>Instructions and Contractor Certifications</u> , the Request for Response (RFR), Request for Proposal (RFP), Invitation for Bid (IFB) or other solicitation, the Contractor's Response, and additional negotiated terms, provided that additional negotiated terms will take precedence over the relevant terms in the RFR/RFP/IFB and the Contractor's Response only if made using the process outlined in <u>801 CMR 21.07</u> , incorporated herein, provided that any amended RFR/RFP/IFB or Response terms result in best value, lower costs, or a more cost effective Contract.			
<b>AUTHORIZING SIGNATURE FOR THE CONTRACTOR:</b>  X: _____ Date: _____ (Signature and Date Must Be Handwritten at Time of Signature or utilize an MBTA approved electronic signature) Print Name: _____ Print Title: _____		<b>AUTHORIZING SIGNATURE FOR THE MBTA:</b>  X: _____ Date: _____ (Signature and Date Must Be Handwritten at Time of Signature or utilize an MBTA approved electronic signature) Print Name: _____ Print Title: _____	





## **14.1 STANDARD TERMS AND CONDITIONS**

Upon execution by the Contractor, MBTA Terms and Conditions will be incorporated by reference into any Contract executed by the Contractor and the Massachusetts Bay Transportation Authority (MBTA), in the absence of a superseding law or regulation requiring a different Contract form. Performance shall include services rendered, obligations due, costs incurred, commodities and deliverables provided and accepted by the MBTA, programs provided or other commitments authorized under a Contract. A deliverable shall include any tangible product to be delivered as an element of performance under a Contract. The MBTA is entitled to ownership and possession of all deliverables purchased or developed with MBTA funds.

### **14.1.1 Contract Effective Start Date**

Notwithstanding verbal or other representations by the parties, or an earlier start date indicated in a Contract, the effective start date of performance under a Contract shall be the date a Contract has been executed by an authorized signatory of the Contractor, the MBTA, a later date specified in the Contract or the date of any approvals required by law or regulation, whichever is later.

### **14.1.2 Payments and Compensation**

The Contractor shall only be compensated for performance delivered and accepted by the MBTA in accordance with the specific Terms and Conditions of a Contract. Overpayments shall be reimbursed by the Contractor or may be offset by the MBTA from future payments in accordance with state finance law. Acceptance by the Contractor of any payment or partial payment, without any written objection by the Contractor, shall in each instance operate as a release and discharge of the MBTA from all claims, liabilities or other obligations relating to the performance of a Contract. See [Form B-1: Base Price](#), and [Form B-1-a: Capital Spare Parts](#), as applicable, for agreed pricing.

### **14.1.3 Contractor Payment Mechanism**

All Contractors will be paid using the MBTA invoicing system and Contractor will submit its invoice with all supporting documentation as prescribed in a Contract. The MBTA shall review and return rejected invoices within fifteen (15) days of receipt with a written explanation for rejection, provided that payment periods listed in a Contract of less than forty-five (45) days from the date of receipt of an invoice shall be effective only to enable the MBTA to take advantage of early payment incentives and shall not subject any payment made within the forty-five (45) day period to a penalty.

### **14.1.4 Contract Termination or Suspension**

A Contract shall terminate on the date specified in a Contract, unless this date is properly amended in accordance with all applicable laws and regulations prior to this date, or unless terminated or suspended under this Section upon prior written notice to the Contractor. The MBTA may terminate a Contract without cause and without penalty, or may terminate or suspend a Contract if the Contractor breaches any material term or condition or fails to perform or fulfill any material obligation required by a Contract, or in the event of an elimination of an appropriation or availability of sufficient funds for the purposes of a Contract, or in the event of an unforeseen public emergency mandating immediate MBTA action. Upon immediate notification to the other party, neither the MBTA nor the Contractor shall be deemed to be in breach for failure or delay in performance due to Acts of God or other causes factually beyond their control and without their fault or negligence. Subcontractor failure to perform or price increases due to market fluctuations or product availability will not be deemed factually beyond the Contractor's control.

### **14.1.5 Written Notice**

Any notice shall be deemed delivered and received when submitted in writing in person or when delivered by any other appropriate method evidencing actual receipt by the MBTA or the Contractor. Any written notice of termination or suspension delivered to the Contractor shall state the effective date and period of



the notice, the reasons for the termination or suspension, if applicable, any alleged breach or failure to perform, a reasonable period to cure any alleged breach or failure to perform, if applicable, and any instructions or restrictions concerning allowable activities, costs or expenditures by the Contractor during the notice period.

#### **14.1.6 Record-keeping and Retention, Inspection of Records**

The Contractor shall maintain records, books, files and other data as specified in a Contract and in such detail as shall properly substantiate claims for payment under a Contract, for a minimum retention period of seven (7) years beginning on the first day after the final payment under a Contract, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving a Contract. The MBTA shall have access, as well as any parties identified under Executive Order 195, during the Contractor's regular business hours and upon reasonable prior notice, to such records, including on-site reviews and reproduction of such records at a reasonable expense.

#### **14.1.7 Assignment**

The Contractor may not assign or delegate, in whole or in part, or otherwise transfer any liability, responsibility, obligation, duty or interest under a Contract without the written approval of the MBTA, with the exception that the Contractor shall be authorized to assign present and prospective claims for money due to the Contractor pursuant to a Contract in accordance with M.G.L. C. 106, §9-318. The Contractor must provide sufficient notice of assignment and supporting documentation to enable the MBTA to verify and implement the assignment. Payments to third party assignees will be processed as if such payments were being made directly to the Contractor and these payments will be subject to intercept, offset, counter-claims or any other MBTA rights which are available to the MBTA against the Contractor. The sale of fifty percent (50%) or more of the equity ownership of a Contractor shall be considered an assignment requiring the prior written approval of the MBTA. Impermissible assignments shall be null and void.

#### **14.1.8 Subcontracting by Contractor**

Any subcontract entered into by the Contractor for the purposes of fulfilling the obligations under a Contract must be in writing, authorized in advance by the MBTA and shall be consistent with and subject to the provisions of these MBTA Terms and Conditions and a Contract. Subcontracts will not relieve or discharge the Contractor from any duty, obligation, responsibility or liability arising under a Contract. The MBTA is entitled to copies of all subcontracts and shall not be bound by any provisions contained in a subcontract to which it is not a party. Subcontracts shall note that the MBTA is not a party to the subcontract. Failure to promptly pay a Sub-Contractor for work performed where the Contractor has been paid by the MBTA shall constitute a material breach of the Contract between MBTA and Contractor.

#### **14.1.9 Affirmative Action, Non-Discrimination in Hiring and Employment**

The Contractor shall comply with all federal and state laws, rules and regulations promoting fair employment practices or prohibiting employment discrimination and unfair labor practices and shall not discriminate in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages, benefits or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, handicap, sexual orientation or for exercising any rights afforded by law. The Contractor commits to purchasing supplies and services from certified minority or women-owned businesses, small businesses or businesses owned by socially or economically disadvantaged persons or persons with disabilities.

#### **14.1.10 Indemnification**

Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the MBTA, its agents, officers and employees against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement or other damages that the MBTA may sustain which arise out



of or in connection with the Contractor's performance of a Contract, including but not limited to the negligence, reckless or intentional conduct of the Contractor, its agents, officers, employees or subcontractors. The Contractor shall at no time be considered an agent or representative of the MBTA. After prompt notification of a claim by the MBTA, the Contractor shall have an opportunity to participate in the defense of such claim and any negotiated settlement agreement or judgment. The MBTA shall not be liable for any costs incurred by the Contractor arising under this paragraph. Any indemnification of the Contractor shall be subject to appropriation and applicable law.

#### **14.1.11 Waivers**

Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor shall it in any way limit the legal or equitable remedies available to that party. No waiver by either party of any default or breach shall constitute a waiver of any subsequent default or breach.

#### **14.1.12 Risk of Loss**

The Contractor shall bear the risk of loss for any Contractor materials used for a Contract and for all deliverables, MBTA personal or other data which is in the possession of the Contractor or used by the Contractor in the performance of a Contract until possession, ownership and full legal title to the deliverables are transferred to and accepted by the MBTA.

#### **14.1.13 Forum, Choice of Law and Mediation**

Any actions arising out of a Contract shall be governed by the laws of Massachusetts, and shall be brought and maintained in a State or federal court in Massachusetts which shall have exclusive jurisdiction thereof. The MBTA and the Contractor may agree to voluntary mediation through the Massachusetts Office of Dispute Resolution (MODR) of any Contract dispute and will share the costs of such mediation. No legal or equitable rights of the parties shall be limited by this Section.

#### **14.1.14 Interpretation, Severability, Conflicts with Law, Integration**

Any amendment or attachment to any Contract which contains conflicting language or has the effect of a deleting, replacing or modifying any printed language of these MBTA Terms and Conditions, shall be interpreted as superseded by the official printed language. If any provision of a Contract is found to be superseded by state or federal law or regulation, in whole or in part, then both parties shall be relieved of all obligations under that provision only to the extent necessary to comply with the superseding law, provided however, that the remaining provisions of the Contract, or portions thereof, shall be enforced to the fullest extent permitted by law. All amendments must be executed by the parties in accordance with Section 14.1 of these MBTA Terms and Conditions (*Section 14.1*). The printed language of the Standard Contract Form (*Section 14*), which incorporates by reference these MBTA Terms and Conditions, shall supersede any conflicting verbal or written agreements relating to the performance of a Contract, or attached thereto, including contract forms, purchase orders or invoices of the Contractor. The order of priority of documents to interpret a Contract shall be as follows: any applicable federal provisions, any supplemental provisions, any negotiated terms and conditions allowable pursuant to law or regulation; the printed language of the MBTA Terms and Conditions; the Standard Contract; the MBTA's Request for Response/Proposal/Bid (RFR/RFP/IFB) solicitation document; and the Contractor's Response to the RFR/RFP/IFB solicitation, excluding any language stricken by the MBTA as unacceptable.

#### **14.1.15 Insurance to be Carried by the Contractor**

The successful Contractor shall submit proof of insurance for the requirements detailed within Section 13.5 of this RFP. If in the case they are not available at the time of preparing their Bid, the successful Contractor certifies that they will carry such insurance policies and all costs resulting from this are included in their pricing. The successful Contractor shall provide proof of insurance within three business days of conditional notice of award.



#### **14.1.16 Contractor Certifications and Legal References**

The Contractor makes all certifications required under this Contract under the pains and penalties of perjury, and agrees to provide any required documentation upon request to support compliance, and agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein.

##### **14.1.16.1 MBTA and Contractor Ownership Rights**

The Contractor certifies and agrees that the MBTA is entitled to ownership and possession of all “deliverables” purchased or developed with Contract funds.

##### **14.1.16.2 Qualifications**

The Contractor certifies it is qualified and shall at all times remain qualified to perform this Contract; that performance shall be timely and meet or exceed industry standards for the performance required, including obtaining requisite licenses, registrations, permits, resources for performance, and sufficient professional, liability; and other appropriate insurance to cover the performance. If the Contractor is a business, the Contractor certifies that it is listed under the Secretary of State’s website as licensed to do business in Massachusetts, as required by law.

##### **14.1.16.3 Business Ethics and Fraud, Waste and Abuse Prevention**

The Contractor certifies that performance under this Contract, in addition to meeting the terms of the Contract, will be made using ethical business standards and good stewardship of taxpayer and other public funding and resources to prevent fraud, waste and abuse.

##### **14.1.16.4 Collusion**

The Contractor certifies that this Contract has been offered in good faith and without collusion, fraud or unfair trade practices with any other person, that any actions to avoid or frustrate fair and open competition are prohibited by law, and shall be grounds for rejection or disqualification of a Response or termination of this Contract.

##### **14.1.16.5 Public Records and Access**

The Contractor shall provide full access to records related to performance and compliance to the MBTA pursuant to G.L. c. 11, s.12 for seven (7) years beginning on the first day after the final payment under this Contract or such longer period necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving this Contract. Access to view Contractor records related to any breach or allegation of fraud, waste and/or abuse may not be denied and Contractor cannot claim confidentiality or trade secret protections solely for viewing but not retaining documents. Routine Contract performance compliance reports or documents related to any alleged breach or allegation of non-compliance, fraud, waste, abuse or collusion may be provided electronically and shall be provided at Contractor’s own expense. Reasonable costs for copies of non-routine Contract related records shall not exceed the rates for public records under the Massachusetts Public Records Law.

##### **14.1.16.6 Debarment**

The Contractor certifies that neither it nor any of its subcontractors are currently debarred or suspended by the federal or state government under any law or regulation.

##### **14.1.16.7 Applicable Laws**

The Contractor shall comply with all applicable state laws and regulations including but not limited to the applicable Massachusetts General Laws; Code of Massachusetts Regulations 801 CMR 21.00 (Procurement of Commodity and Service Procurements); M G.L. c. 66A; and the Massachusetts Constitution Article



XVIII if applicable.

#### **14.1.16.8 Tax Law Compliance**

The Contractor certifies under the pains and penalties of perjury tax compliance with Federal tax laws; state tax laws including but not limited to G.L. c. 62C, G.L. c. 62C, s. 49A; compliance with all state tax laws, reporting of employees and contractors, withholding and remitting of tax withholdings and child support and is in good standing with respect to all state taxes and returns due; reporting of employees and contractors under G.L. c. 62E, withholding and remitting child support including G.L. c. 119A, s. 12; TIR 05-11; New Independent Contractor Provisions and applicable TIRs.

#### **14.1.16.9 Bankruptcy, Judgments, Potential Structural Changes, Pending Legal Matters and Conflicts**

The Contractor certifies it has not been in bankruptcy and/or receivership within the last three calendar years, and the Contractor certifies that it will immediately notify the Department in writing **at least 45 days prior** to filing for bankruptcy and/or receivership, any potential structural change in its organization, or if there is **any risk** to the solvency of the Contractor that may impact the Contractor's ability to timely fulfill the terms of this Contract or Amendment. The Contractor certifies that at any time during the period of the Contract the Contractor is required to affirmatively disclose in writing to the Department Contract Manager the details of any judgment, criminal conviction, investigation or litigation pending against the Contractor or any of its officers, directors, employees, agents, or subcontractors, including any potential conflicts of interest of which the Contractor has knowledge, or learns of during the Contract term. Law firms or Attorneys providing legal services are required to identify any potential conflict with representation of any Department client in accordance with Massachusetts Board of Bar Overseers (BBO) rules.

#### **14.1.16.10 Federal Anti-Lobbying and Other Federal Requirements**

If receiving federal funds, the Contractor certifies compliance with federal anti-lobbying requirements including 31 USC 1352; other federal requirements; Executive Order 11246; Air Pollution Act; Federal Water Pollution Control Act and Federal Employment Laws.

#### **14.1.16.11 Protection of Commonwealth Data, Personal Data and Information**

The Contractor certifies that all steps will be taken to ensure the security and confidentiality of all Commonwealth/MBTA data for which the Contractor becomes a holder, either as part of performance or inadvertently during performance, with special attention to restricting access, use and disbursement of personal data and information under M.G.L. c. 93H and c. 66A and other applicable state and federal privacy requirements. The Contractor shall comply with M.G.L. c. 93I for the proper disposal of all paper and electronic media, backups or systems containing personal data and information. The Contractor shall also ensure that any personal data or information transmitted electronically or through a portable device is properly encrypted using (at a minimum) the Commonwealth's "Cryptographic Management Standard" set forth in the Enterprise Information Security Policies and Standards published by the Executive Office for Technology, Services and Security (TSS), or a comparable Standard prescribed by the MBTA. Contractors with access to credit card or banking information of Commonwealth/MBTA customers certify that the Contractor is PCI compliant in accordance with the Payment Card Industry Council Standards, and shall provide confirmation compliance during the Contract. The Contractor shall immediately notify the MBTA in the event of any security breach including the unauthorized access, disbursement, use or disposal of personal data or information, and in the event of a security breach, the Contractor shall cooperate fully with the MBTA and provide access to any information necessary for the MBTA to respond to the security breach and shall be fully responsible for any damages associated with the Contractor's breach including but not limited to G.L. c. 214, s. 3B.

For all Contracts involving the Contractor's access to personal information, as defined in G.L. c. 93H, and



personal data, as defined in [G.L. c. 66A](#), or access to MBTA or Commonwealth systems containing such information or data, Contractor certifies under the pains and penalties of perjury that the Contractor (1) has read M.G.L. c. 93H and c. 66A and agrees to protect any and all personal information and personal data; and (2) has reviewed all of the Enterprise Information Security Policies and Standards published by the Executive Office for Technology Services and Security (TSS), or stricter standards prescribed by the MBTA. Notwithstanding any contractual provision to the contrary, in connection with the Contractor's performance under this Contract, for all public authorities, executive offices, boards, commissions, agencies, departments, divisions, councils, bureaus, and offices, now existing and hereafter established, the Contractor shall: (1) obtain a copy, review, and comply with any pertinent security guidelines, standards, and policies; (2) comply with all Enterprise Information Security Policies and Standards published by the Executive Office for Security Services and Technology (TSS), or a comparable set of policies and standards ("Information Security Policy") as prescribed by the MBTA; (3) communicate and enforce such security guidelines, standards, policies and the applicable Information Security Policy among all employees (whether such employees are direct or contracted) and subcontractors; (4) implement and maintain any other reasonable appropriate security procedures and practices necessary to protect personal information and data to which the Contractor is given access by the MBTA from the unauthorized access, destruction, use, modification, disclosure or loss; (5) be responsible for the full or partial breach of any of these terms by its employees (whether such employees are direct or contracted) or subcontractors during or after the term of this Contract, and any breach of these terms may be regarded as a material breach of this Contract; (6) in the event of any unauthorized access, destruction, use, modification, disclosure or loss of the personal information or personal data (collectively referred to as the "unauthorized use"): (a) immediately notify the MBTA if the Contractor becomes aware of the unauthorized use; (b) provide full cooperation and access to information necessary for the MBTA to determine the scope of the unauthorized use; and (c) provide full cooperation and access to information necessary for the MBTA and the Contractor to fulfill any notification requirements. Breach of these terms may be regarded as a material breach of this Contract, such that the Commonwealth and MBTA may exercise any and all contractual rights and remedies, including without limitation indemnification under Section 14.1.10 of MBTA's [Terms and Conditions](#), withholding of payments, Contract suspension, or termination. In addition, the Contractor may be subject to applicable statutory or regulatory penalties, including and without limitation, those imposed pursuant to G.L. c. 93H and under [G.L. c. 214, § 3B](#) for violations under M.G.L. c. 66A.

#### **14.1.16.12 Corporate and Business Filings and Reports**

The Contractor certifies compliance with any certification, filing, reporting and service of process requirements of the Secretary of and other Departments as related to its conduct of business in the Commonwealth; and with its incorporating state (or foreign entity).

#### **14.1.16.13 Employer Requirements**

Contractors that are employers certify compliance with applicable state and federal employment laws or regulations, including but not limited to [G.L. c. 5, s. 1](#) (Prevailing Wages for Printing and Distribution of Public Documents); [G.L. c. 7, s. 22](#) (Prevailing Wages for Contracts for Meat Products and Clothing and Apparel); [minimum wages and prevailing wage programs and payments](#); [unemployment insurance and contributions](#); [workers' compensation and insurance](#), child labor laws, AGO fair labor practices; [G.L. c. 149](#) (Labor and Industries); [G.L. c. 150A](#) (Labor Relations); [G.L. c. 151](#) and [455 CMR 2.00](#) (Minimum Fair Wages); [G.L. c. 151A](#) (Employment and Training); [G.L. c. 151B](#) (Unlawful Discrimination); [G.L. c. 151E](#) (Business Discrimination); [G.L. c. 152](#) (Workers' Compensation); [G.L. c. 153](#) (Liability for Injuries); [102 CMR 12.00](#) (Dependent Care Assistance Program); [29 USC c. 8](#) (Federal Fair Labor Standards); [29 USC c. 28](#) and the [Federal Family and Medical Leave Act](#) and M.G.L. c. 175M (Family and Medical Leave).

#### **14.1.16.14 Federal and State Laws and Regulations Prohibiting Discrimination**

Contractors certify compliance with applicable state and federal anti-discrimination laws including but not





limited to the Federal Equal Employment Opportunity (EEO) Laws the Americans with Disabilities Act; 42 U.S.C Sec. 12,101, et seq., the Rehabilitation Act, 29 USC c. 16 s. 794; 29 USC c. 16. s. 701; 29 USC c. 14, 623; the 42 USC c. 45; (Federal Fair Housing Act); G. L. c. 151B (Unlawful Discrimination); G.L. c. 151E (Business Discrimination); the Public Accommodations Law G.L. c. 272, s. 92A; G.L. c. 272, s. 98 and 98A, Massachusetts Constitution Article CXIV and G.L. c. 93, s. 103; 47 USC c. 5, sc. II, Part II, s. 255 (Telecommunication Act; Chapter 149, Section 105D, G.L. c. 151C, G.L. c. 272, Section 92A, Section 98 and Section 98A, and G.L. c. 111, Section 199A, and Massachusetts Disability-Based Non-Discrimination Standards For Executive Branch Entities, and related Standards and Guidance, authorized under Massachusetts Executive Order or any disability-based protection arising from state or federal law or precedent. See also MCAD and MCAD links and Resources.

#### **14.1.16.15 Right-to-Know Law**

The Contractor shall certify that it will comply with the Massachusetts Right-To-Know Law, Chapter 470 of the Acts of 1983. Additionally, the Contractor agrees to submit a Material Safety Data Sheet (MSDS) for each toxic or hazardous substance, or mixture containing such substance, pursuant to M.G.L. c. 111F §§ 8, 9, and 10, and the regulations contained in 441 CMR § 21.06 when deliveries are made.

#### **14.1.16.16 Small Business Purchasing Program (SBPP)**

A Contractor may be eligible to participate in the SBPP, created pursuant to Executive Order 523, if qualified through the SBPP COMMBUYS subscription process at: www.commbuys.com and with acceptance of the terms of the SBPP participation agreement.

#### **14.1.16.17 Other Damages**

The term “other damages” shall include, but shall not be limited to, the reasonable costs the MBTA incurs to repair, return, replace or seek cover (purchase of comparable substitute commodities and services) under a Contract. “Other damages” shall not include damages to the MBTA as a result of third party claims, provided, however, that the foregoing in no way limits the MBTA’s right of recovery for personal injury or property damages or patent and copyright infringement under *Section 14.1.10* nor the MBTA’s ability to join the contractor as a third party defendant. Further, the term “other damages” shall not include, and in no event shall the contractor be liable for, damages for the MBTA’s use of contractor provided products or services, loss of MBTA records, or data (or other intangible property), loss of use of equipment, lost revenue, lost savings or lost profits of the MBTA. In no event shall “other damages” exceed the greater of \$100,000, or two times the value of the product or service (as defined in the Contract scope of work) that is the subject of the claim. *Section 14.1.10* sets forth the contractor’s entire liability under a Contract. Nothing in this section shall limit the MBTA’s ability to negotiate higher limitations of liability in a particular Contract, provided that any such limitation must specifically reference *Section 14.1.10* of the MBTA Terms and Conditions. In the event the limitation of liability conflicts with accounting standards which mandate that there can be no cap of damages, the limitation shall be considered waived for that audit engagement.

#### **14.1.16.18 Northern Ireland Certification**

Pursuant to G.L. c. 7 s. 22C for state agencies, state authorities, the House of Representatives or the state Senate, by signing this Contract the Contractor certifies that it does not employ ten or more employees in an office or other facility in Northern Ireland and if the Contractor employs ten or more employees in an office or other facility located in Northern Ireland the Contractor certifies that it does not discriminate in employment, compensation, or the terms, conditions and privileges of employment on account of religious or political belief; and it promotes religious tolerance within the work place, and the eradication of any manifestations of religious and other illegal discrimination; and the Contractor is not engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles or military aircraft for use or deployment in any activity in Northern Ireland.



#### **14.1.16.19 Pandemic, Disaster or Emergency Performance**

In the event of a serious emergency, pandemic or disaster outside the control of the MBTA, the MBTA may negotiate emergency performance from the Contractor to address the immediate needs of the MBTA even if not contemplated under the original Contract or procurement. Payments are subject to appropriation and other payment terms.

#### **14.1.16.20 Subcontractor Performance**

The Contractor certifies full responsibility for Contract performance, including subcontractors, and that comparable Contract terms will be included in subcontracts, and that the Department will not be required to directly or indirectly manage subcontractors or have any payment obligations to subcontractors.

#### **14.1.17 Executive Orders**

For covered Executive state Departments, the Contractor certifies compliance with applicable Executive Orders (see also Massachusetts Executive Orders), including but not limited to the specific orders listed below. A breach during period of a Contract may be considered a material breach and subject Contractor to appropriate monetary or Contract sanctions.

##### **14.1.17.1 Executive Order 481. Prohibiting the Use of Undocumented Workers on State Contracts**

For all state agencies in the Executive Branch, including all executive offices, boards, commissions, agencies, Departments, divisions, councils, bureaus, and offices, now existing and hereafter established, by signing this Contract the Contractor certifies under the pains and penalties of perjury that they shall not knowingly use undocumented workers in connection with the performance of this Contract; that, pursuant to federal requirements, shall verify the immigration status of workers assigned to a Contract without engaging in unlawful discrimination; and shall not knowingly or recklessly alter, falsify, or accept altered or falsified documents from any such worker

##### **14.1.17.2 Executive Order 130. Anti-Boycott**

The Contractor warrants, represents and agrees that during the time this Contract is in effect, neither it nor any affiliated company, as hereafter defined, participates in or cooperates with an international boycott (See IRC § 999(b)(3)- (4), and IRS Audit Guidelines Boycotts) or engages in conduct declared to be unlawful by G.L. c. 151E, s. 2. A breach in the warranty, representation, and agreement contained in this paragraph, without limiting such other rights as it may have, the MBTA shall be entitled to rescind this Contract. As used herein, an affiliated company shall be any business entity of which at least 51% of the ownership interests are directly or indirectly owned by the Contractor or by a person or persons or business entity or entities directly or indirectly owning at least 51% of the ownership interests of the Contractor, or which directly or indirectly owns at least 51% of the ownership interests of the Contractor.

##### **14.1.17.3 Executive Order 346. Hiring of State Employees By State Contractors**

Contractor certifies compliance with both the conflict of interest law G.L. c. 268A specifically s. 5 (f) and this order; and includes limitations regarding the hiring of state employees by private companies contracting with the MBTA. A privatization contract shall be deemed to include a specific prohibition against the hiring at any time during the term of Contract, and for any position in the Contractor's company, any state management employee who is, was, or will be involved in the preparation of the RFP, the negotiations leading to the awarding of the Contract, the decision to award the Contract, and/or the supervision or oversight of performance under the Contract.

##### **14.1.17.4 Executive Order 444. Disclosure of Family Relationships with Other State Employees**





Each person applying for employment (including Contract work) within the Executive Branch under the Governor must disclose in writing the names of all immediate family related to immediate family by marriage who serve as employees or elected officials of the Commonwealth. All disclosures made by applicants hired by the Executive Branch under the Governor shall be made available for public inspection to the extent permissible by law by the official with whom such disclosure has been filed.

#### **14.1.17.5 Executive Orders 523, 526, and 565**

Executive Order 523 (Establishing the Massachusetts Small Business Purchasing Program). Executive Order 526 (Order Regarding Non-Discrimination, Diversity, Equal Opportunity and Affirmative Action which supersedes Executive Order 478). Executive Order 565 (Reaffirming and Expanding the Massachusetts Supplier Diversity Program). All programs, activities, and services provided, performed, licensed, chartered, funded, regulated, or contracted for by the state shall be conducted without unlawful discrimination based on race, color, age, gender, ethnicity, sexual orientation, gender identity or expression, religion, creed, ancestry, national origin, disability, veteran's status (including Vietnam-era veterans), or background. The Contractor and any subcontractors may not engage in discriminatory employment practices. The Contractor certifies compliance with applicable federal and state laws, rules, and regulations governing fair labor and employment practices. The Contractor also commits to purchase supplies and services from certified minority, women, veteran, service-disabled veteran, LGBT or disability-owned businesses, small businesses, or businesses owned by socially or economically disadvantaged persons; and Contractor commits to comply with any applicable Department contractual requirements pertaining to the employment of persons with disabilities pursuant to M.G.L. c. 7 s. 61(s). These provisions shall be enforced through the contracting Department, OSD, and/or the Massachusetts Commission Against Discrimination. Any breach shall be regarded as a material breach of the contract that may subject the contractor to appropriate sanctions.

#### **14.1.17.6 Laws and Regulations Prohibiting Discrimination and Human Trafficking**

Contractors acknowledge and certify as a condition of this Contract that they are responsible for complying fully with all state and federal laws prohibiting discrimination, human trafficking, and forced labor, including but not limited to Chapter 178 of the Acts of 2011.

### **14.1.18 Supplemental Provisions**

#### **14.1.18.1 Applicability**

Where applicable, these Supplemental Provisions shall apply to this IFB # MBTA Overhead Contact System (OCS) Inspection Cars green & blue lines. In the event of a conflict or disparity between these Supplemental Provisions and Standard Terms & Conditions, the Supplemental Provisions govern.

#### **14.1.18.2 Performance Guarantee**

A Performance Guarantee in the amount of 25% of the Contract value, reduced to 10% during the Warranty period, is required by the Authority to ensure faithful performance of the Contract. The Performance Guarantee may be either a Performance Bond or an Irrevocable Stand-By Letter of Credit and shall remain in full force for the term of this Agreement. The successful Contractor shall certify that it shall provide the requisite Performance Guarantee to the Authority within ten (10) business days from Contract execution in accordance with the following minimum requirements:

- (a) **Performance Bond.** The Bidder shall furnish with its bid proposal, certification that a Performance Bond in the amount of 25% will be furnished should the Bidder become the successful Contractor. The Bidder shall also provide with its proposal a similar statement from its surety. The Authority requires all Performance Bonds to be secured through an insurance company (or companies)



which is / are licensed in the Commonwealth of Massachusetts or which is/are approved by the Authority. The insurance company must have a rating of B+ or better. The name of the agency or agent writing the bond shall be identified with or on the bond.

- (b) **Irrevocable Stand-By Letter of Credit.** If the Bidder chooses to provide a Letter of Credit as its Performance Guarantee, the Bidder shall furnish, with its bid proposal, certification that an Irrevocable Stand-By Letter of Credit will be furnished should the Bidder become the successful Contractor. The Bidder shall also provide a statement from a United States banking institution certifying that an Irrevocable Stand-By Letter of Credit to support the Bidder's performance in the amount of 25% of the Contract value, reduced to 10% during the Warranty period. Bidder submitted Irrevocable Stand-By Letter of Credit will be reviewed by MBTA prior to acceptance in its form and substance and, will be provided if the Contract is awarded to Bidder(s) pursuing this option. |

#### **14.1.18.3 Liquidated Damages**

|There are no Liquidated Damages required for this contract. |

#### **14.1.18.4 Security Requirements**

|The Contractor shall certify that it will comply with the MBTA's Security Requirements as stated herein. The selected Contractor shall:

1. Submit a complete list of Contractor's employees, subcontractors, and agents that will perform work for the MBTA under this Contract. This list must be submitted prior to eligibility consideration for payment of delivery or completion of the first milestone. At a minimum, the list shall include:
  - a) Name and Employee Number/Identifier
  - b) Address
  - c) Job Title
  - d) Hours and Location of Work

Note: Immediate notification, in writing, is required for listed employees, subcontractors, and agents who leave Contractor's (direct or indirect) employment and/or any new employees, subcontractors or agents who are to be added to this list. Contractor is required to provide, upon request by the MBTA, periodic updates of the list throughout the life of the Contract.

2. Conduct for all current and future employees performing work under this Contract, a legally available criminal background check, including a Criminal Offender Record Information (CORI) background check with the Massachusetts Criminal History Systems Board and a driver's history check with the Massachusetts registry of Motor vehicles (if applicable). The CORI check shall include a Level II Sex Offenders Registry check. To the extent not already available to the Contractor, the Contractor shall apply for and make best efforts to obtain CORI access. The Contractor shall provide written documentation to the Authority that demonstrates the Contractor's compliance with the aforementioned requirements. Furthermore, the Contractor shall conduct these background and driver history checks at least once every two (2) years, or as otherwise specified by the MBTA. Any employee of the Contractor's with a history that includes a felony conviction, any conviction for theft, or who appears otherwise unsuitable to perform the work that is the subject of this solicitation throughout the Term of this Agreement or any extensions thereof, shall not be assigned by the Contractor to perform work under this Agreement.



The MBTA reserves the right to have MBTA Transit Police perform the required background checks, and shall promptly notify the Contractor in writing of any such action.

3. Distribute an MBTA-issued photograph Contractor identification badge to all Contractor employees, subcontractors, and agents who work on MBTA property. The contractor shall provide a current (less than 1-year-old) photograph to the MBTA, along with the required completed badge issuance paperwork prior to being issued the badges. The following information shall be listed on the back of the contractor identification badges: training certifications, safety training, and other related security training required by the MBTA. No employee, subcontractor or agent of the Contractor will be allowed on MBTA property without clearly displaying the MBTA-issued identification badge on their person.
4. Insure that Contractor's employees, subcontractors, and agents:
  - a) Are not allowed on MBTA property except as required for stated work;
  - b) Are not allowed on MBTA property before and after service hours unless explicitly, contractually required to be there; and
  - c) Are forbidden from carrying firearms on MBTA property.
5. Provide to the MBTA, upon its request, any documents that pertain to:
  - a) Contractor employee, subcontractor or agent conduct on MBTA property;
  - b) Security training; and
  - c) Monitoring/auditing of Contractor employees or agents while on MBTA property.
6. If, at any time during the term of this Agreement, and also during any and all extensions thereof, the MBTA establishes new or revised security policies and procedures as they relate to the Contractor's performance under this Agreement, the Contractor shall comply with such policies and procedures as deemed reasonable by the MBTA and the Contractor.

#### **14.1.18.5 Right-of-Way Safety Training Requirements**

In the event the Contractor's work is to be performed in proximity to railroad or subway tracks, the Contractor shall obtain appropriate Right of Way safety training from the MBTA before commencing work.



#### 14.1.19 Terms & Conditions Signature

**IN WITNESS WHEREOF**, the Contractor certifies under the pains and penalties of perjury that it shall comply with these MBTA Terms and Conditions under Section 14.1-14.1.19 for any applicable Contract executed with the MBTA as certified by their authorized signatory below:

**Contractor Authorized Signatory:** \_\_\_\_\_

Print Name: \_\_\_\_\_

||

\_\_\_\_\_  
(BLOCK LETTERS)

Title: \_\_\_\_\_

||

Date: \_\_\_\_\_

||

(check one)

\_\_\_\_\_

Organization

\_\_\_\_\_

Individual

<b>Full legal Organization or Individual Name:</b>		
<b>Doing Business As Name (If Different):</b>		
<b>Tax Identification Number:</b>		
<b>Address:</b>		
<b>Phone:</b>		<b>Fax:</b>



FINAL PAGE